HOUSE REPORTS.

CANAL CLAIMS.

COMMUNICATION

FROM

THE GOVERNOR,

Transmitting the Report of the Commissioners appointed to investigate Canal Claims; also, the Attorneys' reports on same.

EXECUTIVE DEPARTMENT,
Springfield, Jan. 8, 1853.

To the House of Representatives:

I herewith transmit to the house of representatives the report of the commissioners, appointed by act of the general assembly, 1852, to investigate and report upon canal claims; also the attorneys' reports on the same.

AUG. C. FRENCH.

REPORT OF COMMISSIONERS.

To His Excellency,
the Governor of the State of Illinois:

We, the undersigned, two of the commissioners appointed by the act of the general assembly of the state of Illinois, entitled "An act to constitute a commission to take evidence in relation to certain claims," approved June 22, 1852, report that the Hon. Hugh T. Dickey, the other commissioner named in said act, having declined to act, we caused a notice to be published in more than one newspaper in Chicago, in one at Joliet, and in one at Ottawa, more than thirty days before the 3d day of December, 1852, that on said third day of December, we would meet at Ottawa, for the purpose of taking evidence according to said act, an exact copy of which publication is as follows, to wit:

"*Notice to claimants against the state, on account of the Illinois and Michigan canal.*—All claimants within the provisions of an act of the general assembly of the state of Illinois, entitled "An act to constitute a commission to take evidence in relation to certain claims," approved June 22, 1852, are hereby notified that the undersigned, two of the commissioners named in said act, will meet on the third day of December next at Ottawa, on the line of said canal, for the purpose of taking evidence according to said act.

"NOAH JOHNSTON,
"November 2, 1852." "A. LINCOLN.

That, accordingly, we did, on said third day of December, 1852, at Ottawa, take the oath prescribed in said act, which was administered to us by the Hon. Edwin S. Leland, judge of the ninth judicial circuit of the state of Illinois, and did proceed at once to the taking of said evidence.

On motion of counsel for claimants, and against the objection of Mr. Edwards, counsel for the state, it was ordered by the board that the original papers filed at the seat of government, and then in the control of the board, should be subject to the inspection of the counsel for the claimants as well as the counsel for the state, but that said papers was not to be taken from the room where the board might be sitting, nor to be inspected by witnesses.

Mr. Edwards, counsel for the state, gave notice to claimants for damages to real estate, that title papers must be produced.

Roswell D. Lyman, whose claim has been presented to the legislature, offered evidence, which, together with the cross-examination by counsel for the state, is as follows:

[*See Plat A.*]

Joseph H. Wagner, being duly sworn, says he is acquainted with sec. 6, T. 33 N., R. 4 E., that the plat marked "R. D. Lyman, No. 1," fairly represents said section, that witness is county surveyor, and made the plat from actual survey and the original field notes of the United States survey. Notes at the bottom of the plat are correct, there are coal beds between the river and the feeder on the north-eastern subdivision of the section; extent of these beds from S. W. to N. E. about forty rods, and from the river to and under the feeder; so much of the coal as lies under the feeder, and also so much as lies near adjacent to the feeder, cannot be worked without injury to the feeder, and the breakage of the feeder is some detriment to the working of the remainder; the strata of coal is about two feet thick; all the subdivisions of said section which are marked "Lyman" are inclosed and the greater part cultivated as farm land; Lyman's residence is on said land at the point where the word "house" is written on the plat. To travel from Lyman's residence to the coal bed he must go a mile and a half further than he would if the feeder were not there, unless he should ford the feeder, which is impracticable, and the same distance to reach that part of his farm lying south of the feeder; the residence of Lyman a mile and a quarter from Ottawa, and the coal land one and three quarters. From 8 to 12, south of where the east and west line passing through the middle of said section crosses said feeder, there is a waste weir or place for surplus water to escape. The water runs a distance of about twelve rods over another coal bed into the river. This last mentioned coal bed has a stratum of about two feet, it is opened about four rods one way and thirty or forty feet the other, doubtless extends further, but how far is not known. So far, witness thinks, the waste water aforesaid has facilitated the raising of coal from the bed, but thinks it will ultimately be an injury to it. Thinks Lyman's farm is, at this time, worth from twenty to twenty-five dollars per acre.

Cross-Examination.—In the winter of 1842–3 thinks the land was worth eight dollars per acre. The town of Ottawa was laid out on state canal land, part on a donation by the state to the county, and part as a state's addition to the town; the proximity of Lyman's land to Ottawa has something to do with its enhanced value. The construction of the canal has enhanced the value of all lands on the line, and Lyman's with the rest, and witness thinks if Lyman's land had been his, would have preferred having the canal, without compensation, to not having it at all.

Re-examined.—Lyman's land derives no particular advantage from the canal, but only the common advantage with other lands on the line. The feeder, witness considers a decided disadvantage to Lyman's farm, on the whole, though it gives a small advantage of bringing stock water more convenient to him. Witness thinks the lands lying along the Illinois river are as much benefitted by the canal as those immediately on the line. The feeder, witness thinks, indispensably necessary to the canal, but that it might have been constructed at less expense, just as beneficial for the canal and less injurious to Lyman's land.

George H. Norris, by Mr. Edwards, for the state, says he has and is prosecuting a claim against the state, for damage done by the canal on one track and by a feeder on another.

By Lyman's counsel.—Lyman's land is not cut by the main canal, it is a half mile distant, and Fox river is between at the nearest point. Witness thinks Lyman's farm is now worth twenty-five dollars per acre; Lyman has occupied and possessed said farm for near fifteen years. Witness knew Downey Buchanan, who testified for Lyman on his original application, and knows that he is now dead, and with good opportunities for knowing, he does not believe he had any interest in this or any similar claim. Witness thinks that Lyman's coal beds, taken separately from the other land, is worth four or five hundred dollars per acre. Feeder is not navigable with canal boats freighted; tried it several times and failed.

State of Illinois, }
La Salle county, } ss.

Henry J. Reed, being first duly sworn, says that he is well acquainted with the farm of R. D. Lyman, on the west fraction of the north-east quarter of sec. six (6,) town. 33, range 4, east of the third principal meridian; that he has been acquainted with said land about eighteen years; that Roswell D. Lyman has been in possession of the same since about 1839, claiming title; that said land is an improved and cultivated farm; that there is on said tract of land a valuable coal bed on the north-east corner of the fraction. Said feeder runs across said coal bed for forty rods or more; said coal bed is of a good quality and the strata of coal about two feet thick. I think the coal on that land is worth two cents a bushel. The coal bed cannot be worked nearer than almost twelve feet of the base of the feeder bank. To get to this coal bed or to that part of his land which is across the feeder from his house, Lyman has to travel at least one mile and a half further than he would have to do if the feeder was not there. On that piece of land which is marked "Cashman and Lyman," on the plat, there is a bank on each side of the feeder 75 feet wide, making 150 feet in width, exclusive of the bed of the feeder, which is rendered utterly useless by reason of the deposit of earth and sand excavated from the feeder. On the same land, on the north side of the feeder, about three acres are overflowed by water setting back from the feeder. On the south side of the feeder about six acres of land is rendered useless, by reason of the drainage from the feeder. On the same land is a coal bed of a good quality, about two feet thick, over which the feeder runs. I believe there is coal under the bed of the feeder in its whole length on section six aforesaid. Affiant knows that when the feeder was dug, coal was found in various places for the whole distance, and coal was raised from the feeder very near the waste weir hereafter mentioned, at a time when there was a break in the feeder. There is a waste weir of that land where the water runs from the feeder, and that water will render it difficult to get the coal. Lyman has been obliged to dig a drain to carry the water around that part of the coal bed where coal is now being raised. I believe the coal land to be worth four hundred dollars an acre for the coal that is

upon it. And that the farm of Lyman, and the land of Cushman and Lyman, is worth less by one-fourth than it would be if the feeder did not cross it at all.

Cross-Examination.—The feeder mentioned was constructed in 1838, 1839 and 1840. Does not know whether Lyman made any objection to the construction of feeder. Witness knew there was coal on Lyman's land before feeder was located; thinks some coal was dug there in the fall of 1834. Boats can pass on the feeder now and take coal from the bank. Thinks Lyman's whole farm now worth from twenty to twenty-five dollars per acre. Knows of contiguous canal lands being appraised at one hundred dollars per acre; thinks this canal land mentioned, worth more than Lyman's by ten dollars per acre. Has no interest in this or any similar question.

Re-examination.—Witness thinks the appraisement of the canal lands as above stated was very much above the true value; thinks thirty dollars per acre about the true value. Witness thinks the said canal lands more valuable than Lyman's, because it is not cut by the feeder, the quality of the land is very similar, the canal lands are also nearer the town of Ottawa. Before the construction of the feeder Lyman's land was all dry and fit for cultivation; about nine acres of that part of the land marked on the plat as "Lyman and Cushmar," is flooded by the feeder, this being the same mentioned in the direct examination. On reflection, witness does not remember to have ever seen a common canal boat on said feeder, and is not sure the feeder is navigable for such boats.

Re-Cross-Examination.—Witness thinks the lands marked "Lyman," on the plat, is not as much damaged by the feeder as that marked "Lyman and Cushman." Thinks this land was worth about twenty dollars per acre as early as 1839.

Re-examination.—Thinks that while the feeder injures Lyman's land, as before stated, it does not benefit it in any particular. Thinks the canal is of benefit to the state generally, and also supposes it may be of some greater benefit to the lands now contiguous to it.

Abstract W. fr. S. E. ¼ Sec. 6, 33, 4.

Allen H. Howland and Henry Green, W. fr. S. E. ¼ 6, 33, 4. Filed October 21, 1835, - - - -	A. 500
Henry Green, etrx. Henry L. Brush, deed, und. ½ same. March 3, 1836, - - - - -	C. 118
United States patent, Henry Green, W. fr. S. E. ¼ sec. 6, 33, 4. March 24, 1840, - - - -	5.159
Henry Green, etrx. deed, W. H. W. Cushman, und. ½ W. fr. S. E. ¼ 6, 33, 4. March 17, 1841, - -	7.176
Henry L. Brush, etrx. deed, R. D. Lyman, und. ½ W. fr. as above. May 15, 1841, - - - -	7.300
Henry Green, etrx. deed, W. H. W. Cushman, und. ½ W. fr. as above. March 29, 1842, - - - -	8.93
Joseph O. Glover, etrx. deed, W. H. W. Cushman, und. ½ same. March 23, 1842, - - - -	9.97

NOTE.—Mr. Edwards objected to all the proof, in the case of R. D. Lyman, in relation to coal and coal banks, as being an increase of a claim.

R. D. Lyman, mort. John Vahort, November 15, 1844, und. ½ same tract, - - - - - 10.443
R. D. Lyman, mort. W. H. W. Cushman, und. ½ same tract. April 25, 1846, - - - - - 12.349
Henry Green, etrx. trust deed, Aaron Reed, W. fr. S. E. ¼ sec. 6, as above. Filed March 24, 1847, - - 13.537

State of Illinois, } ss.
La Salle county, }

I, Philo Lindley, clerk of the circuit court, and *ex officio* recorder in and for said county, do hereby certify that the within is a correct abstract of conveyances of west fr. of S. E. ¼, sec. 6, T. 33, R. 4, as shown by the tract book in my office, and that the dates given herein are the dates of filing for record.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 4th day of December, A. D. 1852.

[L. s.]

P. LINDLEY, *Clerk and ex officio Recorder.*

The record shows that the consideration mentioned in the deed from Henry L. Brush to R. D. Lyman, was three hundred dollars. The date of the deed, April 30, 1841, book 7, page 300.

The consideration in the deed from Henry Green to H. L. Brush, of date 31st August, 1835, was sixty-three dollars, book C, page 118.

George H. Norris, on one claim which had been presented to the legislature, offered evidence, which, together with the cross-examination by counsel for the state, is as follows, to wit:

Henry J. Reed, being first duly sworn, saith that he is well acquainted with the west fraction of the south-west quarter of section thirty-two, in township thirty-four north, of range four, east of the third principal meridian. The Fox river feeder of the Illinois and Michigan canal enters said tract on the north line of said tract, and following the base of the bluff runs diagonally through said tract about a half a mile, in a south-west direction, leaving twenty-five acres of said land in a strip, over a half mile long, between Fox river and the feeder, and the remainder of the tract in a three cornered form on the other side of the feeder. There is a coal bed on said tract. In my judgment, at least two acres of the coal land on said tract is taken up by the said feeder and its banks. That to get from one part of said land to the other, it would be necessary to travel at least two and one half miles. The construction of the feeder injures the land for farming purposes, and makes it a great deal more difficult to get the coal to market. Affiant agrees in his opinion in relation to these last matters with the statements of J. H. Wagner, this day made in this case. I have known this land some eighteen years. In my opinion the injury to the coal bed alone, and the amount of the coal taken, damage the land one thousand dollars.

Cross-Examination.—This land is immediately above and corners

with section six. From 1838 to 1840 the land was worth from ten to fifteen dollars per acre. This land is not so valuable as that of Mr. Lyman's. This land is, from 1848 till now, worth from fifteen to twenty dollars per acre. The general value of the lands for four or five miles up the feeder, and up the canal, is from fifteen to twenty-five dollars per acre.

Re-examination.—The piece of land joining Norris, on the west, was in 1839 worth twelve dollars per acre, and in witness' estimation it is now worth more per acre than Norris'. In estimating Norris' land at from ten to twelve dollars per acre from 1838 to 1840 witness did not intend to estimate the coal upon it at that time. Witness knew there was some coal there, but did not know the extent of it. Witness now regards the coal as of more value than the land would be independent of it.

Re-Cross-Examination.—In answer to the question, what was the market value of Norris' land from 1838 to 1840, witness says, if that land had been put up for sale I should not have given more than ten dollars per acre. In answer to the question, what is it now worth as a market value, he says, from fifteen to twenty dollars per acre.

Re-examination.—Witness thinks Norris' land, as it is, is worth twenty-five dollars, and that it would be worth ten dollars more with the feeder off from it.

Joseph H. Wagner, being duly sworn, deposes and says, that he is acquainted with the situation of the W. fraction of S. W. ¼ sec. 32, T. 34 R. 4 E. That the feeder of the Illinois and Michigan canal runs through said tract from the north to the south end, rendering it almost valueless for farming purposes; that there is a bed of coal to the extent of several acres on said land, part of which is covered by said feeder and its banks, that the coal land is materially injured in value by the leakage from the feeder rendering it more difficult and expensive excavating the coal; the only way to haul coal from that portion of the land lying east of the feeder is by hauling it either on the bank of the feeder, or across Fox river, which in the winter season is difficult and sometimes dangerous; there is no bridge by which a team can cross from one portion of the land to the other, without traveling at least two and a half miles. Aside from the damage done the land for farming purposes, in my opinion the value of the land lessens by the construction of the feeder, one thousand dollars.

Cross-Examination.—This land was worth in 1842, from eight to ten dollars; was not in the country before 1842. The lands up the feeder its whole length, four miles, excepting sections one and two, which are now worth from twenty-five to thirty dollars per acre in 1842 suppose they were worth from six to ten dollars per acre, though was not so well acquainted then; sections one and two are now valuable; section one is canal land and section two is not. Witness is county surveyor.

Re-examination.—If the feeder was not there the coal bed would be worth a cent and a half per square foot as it is; that which is accessible is not worth more than half as much, to say nothing of that which is covered by the feeder and banks. That part of the land

west of the feeder is, for farming purposes, worth twenty-five dollars per acre; that between the feeder and river is, for farming purposes, worthless; the land between the feeder and river is some wetter in consequence of the feeder, but would still be good meadow land if it were accessible; as it is not, without a bridge, and it would not be so convenient even with a bridge, the land between the feeder and river, including the coal bed, is worth ten dollars per acre. The cost of a bridge to reach the land between the feeder and river, would be more than the value of the land. The feeder is not navigable for ordinary canal boats, but witness has seen it navigated by small flat boats drawing ten inches water, in transporting flour and bran from the Dayton mills.

The deed for the land to Norris is dated December 4, 1847, consideration $575, quantity 73.17-100 acres.

George H. Norris, on another claim which had been presented to the legislature, offered evidence which, together with the cross-examination by counsel for the state, is as follows, to wit:

Norris' deed for this land is dated August, 1835, consideration $10 per acre.

Joseph H. Wagner, produced by the claimant and examined by the attorney for the state, says that cattle cross the canal and feeder. Does not know that there is coal on sec. 10, 33, 3, but sec. 2, where the feeder crosses, there is coal, which is from seven to eleven feet under ground, and is worth from one and a half to two cents per bushel in the bed.

Cross-Examination.—That the canal trustees claim to control on each side of the canal ninety feet in width; that the ground occupied by the spoils banks is worthless, rendered so by the occupation of this earth, and that the spoils banks occupy the ninety feet, or nearly so, and that the trustees of the canal have forbidden the adjoining proprietors from removing said earth.

Henry Green, being first duly sworn, saith that he is acquainted with sec. 12, town. 33 north, range 3 east, and has known it for nineteen years. The W. ½ of N. E. ¼, and und. ½ of E. ½ of same quarter, is claimed by W. H. W. Cushman. The Illinois and Michigan canal runs through the whole quarter section from the east line to the west line of the quarter section; that through the west half of the said north-east quarter, said canal is one hundred feet wide, except about twelve rods on the west side, which is sixty feet, exclusive of the spoil banks; there is a coal bed on said quarter, which is worked upon the W. ½ of said quarter at different points, and coal exhibits itself nearly the whole width of the quarter and on both sides of the canal, and I have no doubt that the bed of coal underlies the whole bed of the canal on that quarter, except about ten or twelve rods next to Fox river; the strata of coal on that land is from eighteen to twenty inches thick, so far as opened, and is worth at least one cent per bushel in the bed; between three and four acres on the west half of said quarter had been stripped to the depth of from three to four feet, so as to render the same entirely valueless for farming purposes, and said last named tract is mostly in such a situation in reference to the

canal that the coal cannot be removed from it, so that it is for the most part entirely valueless*.

Reddick and Bush, each making a separate claim for damage to the E. ½ of S. E. ¼ of sec. 2, T. 33 N., R. 3 east, presented their title papers, to which Mr. Edwards, counsel for the state, raised no objection. The consideration in one of the deeds shows this land to have been worth $60 per acre in September, 1848.

Henry L. Brush, on a claim for damages to S. ½ of W. ½ of N. E. ¼ of sec. 10, T. 33 N., R. 3 east, also for E. ½ of N. E. ¼ of same section, presented title papers, to which counsel for the state raised no objections. The deed to Brush, in this case, dated July 14, 1837, consideration $2 50 per acre; also proved by Joseph H. Wagner that he considers Brush's land on sec. 10, worth seventy-five dollars per acre.

On the claim of Henry L. Brush for the undivided half of E. ½ of S. E. ¼ of sec. 2, and for the whole of the S. ½ of W. ½ of N. E. of sec. 10, and E. ½ of N. E. 10, all in T. 33 N., R. 3 E., counsel for the state offers the parol testimony of Joseph H. Wagner, which is as follows, to wit:

Joseph H. Wagner sworn, says he considers the E. ½ of S. E. ¼ of sec. 2, 33 N., R. 3 east, worth five hundred dollars per acre, and thinks the coal on it increases the valuation one half; considers Bush's land on sec. 10 worth seventy-five dollars per acre.†

On the claim of J. C. Chaplin and others, for damages to the W. ½ of S. E. ¼ of sec. 2, T. 33 N., R. 3 E., counsel for the state offered the parol testimony which follows, to wit:

Joseph H. Wagner sworn, says that he considers the W. ½ S. E. ¼ sec. 2, 33, 3, worth now, the south forty acres, one thousand dollars per acre, the north forty acres, two hundred and fifty dollars per acre. Witness thinks that there is ten acres out of the south forty acres worth only fifty dollars per acre; said ten acres lies in the south-west corner of said forty. Witness has been a civil engineer since 1835, and employed on the Utica and Schenectady Railroad, firstly as rodman and leveller, and on the Canojoharie and Catskill Railroad, as assistant engineer, and is acquainted with the land, and has been for several years. Does not know that the feeder could have been constructed so as to have injured that land much less than it is. Witness thinks that material for construction of the feeder banks might have been obtained at other points, so as to have not injured that land as much, but to have done this it would have been more expensive to the canal. Witness thinks that the material for these embankments might have been taken from one acre of ground, but to have done so would have been more expensive, but such additional expense would not equal the additional damage done the land by extending over the surface.

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*Note.—Mr. Edwards, counsel for the state, objects to so much of the above statement as relates to coal, because it is an increase of claim, which objection the board sustain, but allowed the statement to be placed on file for the inspection of the legislature, on the ground that the evidence in relation to coal is rejected. Mr. Edwards declines to cross-examine the witness, or to introduce proof upon the point. Mr. Edwards admits the sufficiency of the title to all the tracts in this claim.

†Note.—This evidence, as to the first tract, applies equally to the claim of Mr. Reddick.

Springfield, December, 1852.

R. E. Goodell states on oath, that he has resided in the town of Ottawa eighteen years last past, during which time the Fox river feeder of the Illinois and Michigan canal was constructed; that since the construction of said feeder he has been well acquainted with the value of real estate in the state's addition to Ottawa and the adjoining lands; that in his opinion the state's addition to said town has increased as much in value, since the construction of said feeder, as any part of section number two, adjoining the same. The town of Ottawa is situated on section eleven, and most of the part I refer to, to wit, the state's addition to Ottawa, is nearer the court house than any part of section two. The increased value of section eleven has been caused, in my opinion, by the nearer location it has to the business part of the town, and the completion of the canal. I think that the valuation of section two in a body has been increased by the completion of the canal. At the time the canal was completed, I think I would rather have the land in section two with the canal than without it. The land which is used on the W. ½ S. E. ¼ for the feeder, I consider worth at least six hundred dollars per acre. The land overflowed by the feeder and the canal I think in a body valueless. The injury done by the overflowing the eighty acres with the feeder I consider not less than eight thousand dollars. By the construction of the canal without the feeder, unless the state built a culvert so as to let the water pass off, there would have been nearly the same amount of land overflowed; this would have been in consequence of the construction of the canal. The plat herewith filed, marked "Plat of lands near Ottawa," is a correct map.

The following plat, proved to be correct, was introduced by counsel for the state, and filed for reference in all cases to which it applies:

[*See Plat B.*]

The trustees of the United States Bank, whose claim had been presented to the legislature, offered the exhibit herewith, marked "U. S. Bank, No. 1," which, together with explanatory parol testimony, was received, as follows, on the condition stated: Samuel Staats Taylor, produced by the attorney of the United States Bank, and sworn. The witness holding in hand the account herewith filed, marked "U. S. Bank, No. 1," offered to give some explanatory evidence, when Mr. Edwards objected to the filing of the paper; first, because it was proved *ex parte*, without opportunity of cross-examination, and, secondly, because it lays the basis of a new claim; whereupon the claimant consents that it be filed, to be used only in explanation of the claim as originally filed, and in no wise as an increase of the same—upon which condition the commission have allowed it to be filed.

Witness knows John Rumsey, who made the affidavit filed with the account; was one of the book-keepers in the United States Bank, employed as such during all the time the transactions stated in said account occurred, and that he is now and has always been one of the book-keepers of said bank. Knows his hand-writing, and the signature to the affidavit is his. The difference in the amount between this account and the one originally filed arises from the fact that in this ac-

count there is a charge made for coupons that is not in the first account, the bank having been made to pay them, on a garnishee process issued against the bank by one of the creditors of the state of Illinois.*

The undersigned further report, that all the other claims, upon which any evidence was offered, falling in classes, so that any evidence, applicable at all, was applicable to a whole class, we found it convenient, and even absolutely necessary, for the saving of time, to take a larger portion of the testimony under the head of "general evidence." Intermingled with this are occasional explanatory notes. The general evidence is as follows, to wit:

General evidence taken at Ottawa, Chicago and Springfield before Hon. N. Johnston and Hon. A. Lincoln, December, 1852.

William M. True, on behalf of the state, sworn, says—During the time the contractors were to work on the canal, he received canal scrip at par, as a merchant at Ottawa. Witness does not know that the hands received scrip of contractors at par; thinks merchants generally received it at par.

Cross-Examination.—Witness thinks he did not receive and pay out scrip as low as twenty-five cents on the dollar—thinks it was at one time received as low as twenty cents; there was a time when it rated at fifteen and twenty cents on the dollar, and business men generally refuse to deal in it at that time. Do not recollect whether the work on the canal was in progress or not. Cannot recollect that at any time after July, 1852, scrip was received by merchants at par. There was a time, while the canal was in progress, that scrip was received by the merchants as low as seventy-five cents on the dollar—no positive recollection of taking it lower than that.

Re-examination.—Cannot state that at any time from 1842 to 1845, it was received at par.

Continuation of general evidence taken at Chicago.

Alexander Brand, on behalf of claimants, sworn, says—That he has been engaged in the exchange business since 1839, in the city of Chicago, Has dealt in canal indebtedness. The first was the old 1840 interest scrip. Second class was certificates given for large balances due the contractors. Third class was what is now called indebtedness, and printed on the back of an engraved plate.

March 6, 1840. Exchange between here and New York on State Bank of Illinois, was 12 and 12½ per cent.

April 3, 1840. Some merchants in this city took scrip at par; George Smith, dealer in exchange and banker, bought it at 62½ and 68 cents,

April 16, 1840. Scrip was taken by many merchants at par, for most goods. The merchants contrived generally to increase the price of their goods. Some goods they would not sell for scrip, at par. Some had attempted to scale down scrip to 75 and 80 cents, selling goods at their cash prices; but that was not liked by purchasers. It

*Note.—The testimony of this witness, so far as it may tend to lay the basis of a new claim, or to increase the original claim, is excluded, and is only received so far as it may tend to explain the original claim.

was bought at 68 and 75 cents on the dollar, in Illinois money. When bought or sold for specie the price was different.

May 9, 1840. Scrip was getting more languid, at 70 cents. Many merchants were selling goods for it at par, adding something, I presume, to the prices. Exchange on New York 10 per cent.

May 13, 1840. Scrip, at this date, was from 65 to 75 cents.

May 26, 1840. Witness sold five hundred dollars of scrip at 71 cents.

June 1, 1840. On this date, witness bought eleven hundred dollars at 73½ cents.

June 13, 1840. Scrip, at this date, from 70 to 72 cents.

June 28, 1840. Offered for a quantity of scrip 68 cents, but the nominal price was 65 cents.

July 9, 1840. Sold $1,052 for 70 cents, but purchasing at 65 cents. The above sale was on account of a St. Louis broker.

August 21, 1840. Sixty-five cents was as much as was given at this date. It had fallen suddenly, and was suspected that workmen would not take it any longer at par from the contractors. Exchange at this date on New York, 8 per cent.

August 27, 1840. Witness bought at 65 cents; other brokers refused to give more than 62½ cents.

Sept. 3, 1840. Canal scrip is quoted at 62½ cents.

Sept. 26, 1840. Canal scrip is quoted at 65 cents, and exchange on New York 7 per cent.

Nov. 6, 1840. Exchange on New York 7 per cent., scrip 72 to 75 cents.

Nov. 18, 1840. Exchange on New York 3 per cent. This reduction of exchange was in consequence of the bank having bought part of the "contractors' loan,"

December 1, 1840. Scrip was not selling for less than 70 cents upon and after the receipt of the governor's message.

Dec. 11, 1840. The "Branch Bank" at Chicago resumed specie payment on its own notes. Exchange on New York 3 per cent.

Dec. 17, 1840. Exchange on New York 3 per cent. Scrip, nominally, at 70 cents. The reduction of exchange spoken of was an important measure for the bank to facilitate the resumption of specie payments, in the opinion of the witness.

January 9, 1841. Scrip quoted at 63 to 68, dull, for State Bank bills. Exchange on New York 3 per cent premium.

Jan. 13, 1841. Scrip 62 to 68. Exchange on New York 3 per cent. premium.

Jan. 15, 1841. Scrip dull—no fixed quotations—say 62 to 68.

February 15, 1841. Bank here ceased to draw to-day.

February 18, 1841. Exchange on New York from 8 to 10½ in State Bank paper. Specie was worth from 9 to 11 discount on State Bank paper. The value of specie here changed, owing to the greater or less demand for land sales. At this time, witness' impresssion is that the bank had again suspended specie payment.

Nov. 13, 1841. Exchange on New York 10½ per cent. About this date scrip sold for 45½ cents.

Nov. 20, 1841. Exchange on New York 11 per cent.

Dec. 2, 1841. Exchange on New York 12 to 13 per cent.

Dec. 4, 1841. Witness offered to sell scrip for 42½ cents—does not think he sold at that.

Dec. 17, 1841. Exchange on New York 15 per cent.

Dec. 28, 1841. Exchange on New York from 15 to 17 per cent.

Dec. 29, 1841. Sold over $2,000 of scrip at 40 cents.

January 19, 1842. Exchange on New York from 14 to 16 per cent.

Jan. 22, 1842. Witness offered twenty-five cents for five hundred dollars canal scrip, on the face, not counting interest.

Jan. 29, 1842. The price of canal certificates ranged from 20 to 25 and 30 cents.

In February the exchange on State Bank paper run up from 15 to 22 per cent. The bank soon after failed.

February 16, 1842. Canal office made a new issue on the back of the blank checks on State Bank, afterwards known as canal indebtedness not bearing interest. Worth at this time about 25 cents. Canal scrip worth from 28 to 33 cents, in currency.

March 5, 1842. Exchange for currency, (Indiana and Wisconsin money,) was 14 per cent. premium. Indebtedness selling at 20 and 25 cents, for currency.

May 26, 1842. Illinois State canal scrip, bearing interest, worth 30 to 25 cents, and indebtedness from 18 to 23 cents. Interest not included in this scrip, but bought at the face. Next day, exchange on New York 8 per cent.

June 11, 1842. Canal scrip sold on the face for 23 cents; indebtedness, with no interest, from 18 to 22 cents.

Aug. 5, 1842. Canal scrip and indebtedness might be bought for 15 cents, and sold at 20 cents.

Aug. 11, 1842. Scrip worth from 15 to 22 cents. Same price on the 26th; and Sept. 5th same price.

Sept. 24, 1842. Scrip from 18 to 22 cents. This range of figures includes canal scrip and indebtedness.

October 8 and 25, 1842. Quotations the same—18 to 22 cents.

Nov. 23, 1842. Scrip from 20 to 22 cents. Exchange on New York, for Indiana and Ohio currency, 3 per cent.

Dec. 3, 1842. Price rising, temporarily, and worth from 18 to 25 cents.

Dec. 29, 1842. Scrip and indebtedness dull at from 17 to 22 cents.

Jan. 14, 1843. Scrip from 16 to 20 cents, and dull.

July 5, 1843. Scrip about 25 cents. July 17—worth 29 and 30 cents; and up to the 20th November did not range higher than 26 cents, but at the canal sale it was nominally as high as 30 cents.

All the above information was extracted from letters, and quotations of rates, written by witness to correspondents, and he believes the same to be as correct as he could write them at the time. As a general thing, witness did not deal in scrip and indebtedness for canal contractors. One of the canal contractors deposited with witness

canal indebtedness as security for borrowed money, and he afterwards had to sell it to reimburse himself. The amount of indebtedness was twenty-five hundred dollars. It was sold in June, July, and August, 1842, for about 20 cents on the dollar. The indebtedness belonged to Mr. Bracken. Witness bought of E. W. Herrick, one of the contractors, in the months of November and December, 1845, nearly $1,500 of scrip and indebtedness, at from 32 to 33 cents on the dollar. May have bought from other contractors, but does not recollect the particulars of any purchase.

June 20, 1844. Witness bought in New York city $800 of scrip on the face, for $320 ; and bought, in Chicago, in the same month, indebtedness, for 32 cents. During July, August and September, that was about the rate it sold for here.

Oct. 3, 1844. Witness bought $130, on the face, for $44, being a little over 33 cents on the dollar.

Nov. 22, 1844. Bought $200 of indebtedness at 26 cents. In December bought again at the same rate.

May 22, 1845. Bought indebtedness at 30 cents. In July bought $1,000 at same rate.

Oct. 1845. Bought indebtedness at from 30 to 32 cents, and scrip, computing interest, about the same.

Feb. 20, 1846. Bought Scrip at 30 cents, computing interest. In the summer bought scrip at 28 and 30, and in September bought at 35 cents, on the face.

January, 1847. Bought, from January to March, for 26 and 28 cents.

In September, 1847, it run up to 35 cents. Governor's scrip was sold, during 1846 and 1847, generally at about the same rates.

Cross-Examination.—The legislature afterwards allowed interest to contractors on the indebtedness, from the time it was issued, but the contractors having parted with their indebtedness, in many instances, derived only a partial benefit from this provision.

For all canal lots and lands sold previous to and including the year 1843, scrip and indebtedness was taken at par; but persons buying paid much higher for the lots and lands, knowing that they could pay in scrip and indebtedness. My recollection is, that lots and lands brought three times as much as the appraisal.

Witness paid for S. ½ of lot 9 in block 5, fr. section 15, (sold in 1843,) $1,020—is now worth $3,000, cash—and paid for lot 5, block 12, same section, $620, in scrip. It has just been sold for $5,000. Lot 3, block 21, was sold for $225 in scrip, is now worth about $1,500. E. ½ lot 4, block 42, and lot 7, same block—one was sold for $3,580, and the other for $1,350—are now worth $4,000 each. Lot 7, block 1, sold for $2,170, is now worth $5,500.

(Counsel from claimants objects to the testimony in regard to the value of the property.)

Re-examination.—He cannot say that he remembers of any lots or land having been bought by contractors.

He does not know of any of the contractors having sold bonds for wheat, and lost the whole.

Edward J. Tinkham, on behalf of claimants, sworn, says. Has been in the banking and broker business in the city of Chicago since 1839. His impression that the per centage on State Bank of Illinois between Chicago and New York, in 1840, was from 6 to 7 per cent. Cannot say what the per centage between New York and London was at that time.

Thinks that the exchange for State Bank of Illinois, in the fall of 1840 and spring of 1841, was gradually rising; that in the spring of 1841 it was 10 per cent.

He bought from 1840, and for a year or two afterwards, considerable scrip.

When the interest scrip was first issued, in March, 1840, the price varied in the market of Chicago, from 60 to 70 cents.

The canal indebtedness, when first issued, was worth, in this market, from 30 to 35 cents, but subsequently sold, and the house in which witness was engaged bought it, as low as 28 cents, and knows of sales at that rate; that the canal bonds were quoted at about the same rate; that at the time state indebtedness scrip had depreciated, and was worth about the same, including interest, to wit, 30 to 35 cents on the dollar. When witness speaks of scrip, he alludes to the scrip issued in 1840 bearing interest; and when he speaks of indebtedness, he alludes to an issue, made in '41 or '42, which did not bear interest. When witness speaks of the value of scrip and indebtedness being equal, he means the indebtedness on its face, and the scrip with the interest added in.

Cross-Examined.—From 1840 to 1845, the custom was, in sales of scrip at Chicago, that if he bought one hundred dollars of scrip with one year's interest upon it, at fifty cents on the dollar, he gave fifty-three dollars for it. When scrip was first issued I knew of instances where merchants received it at par for debts due them, depending on the character of the debt and the solvency of the debtor, and whether they could have got any thing else. Does know of indebtedness or canal bonds being taken in that way. Witness does not know as he ever sold at any rate.

Henry Smith, on behalf of the claimants, sworn. Says he has resided in Chicago since 1838. Prior to 1841 was engaged in carrying out a contract on the canal. Has no interest in any claim against the state. After 1841 was engaged in the mercantile business, and as a dealer in real estate. In 1842 William B. Ogden received some $18,000 or $20,000 in canal bonds from an association of contractors, to dispose of at New York city. Ogden exchanged some bonds for goods. Witness made the settlement between Ogden and the contractors. He knows of the goods having been received. These bonds were disposed of so as to net about twenty per cent. of their face; and witness believes that was the best disposition that could have been made of them, and was a higher rate than they could have been sold for cash. Witness knows that the same goods were paid out to hands at the Chicago market price in payment for their labor. Witness has heard the testimony of Alexander Brand. At the time referred to by him, I had more or less scrip and indebtedness passing through his

hands. Concurs in his general statement in regard to their value at the times mentioned. Witness knows where scrip or indebtedness was taken by merchants for goods, or by laborers for labor, or for materials, or provisions for the canal, at par. A corresponding increase in the price was made to cover the depreciation so as to approximate to the cash value. Whenever payment was made to laborers par funds only were used in payment; and the price per day or month was always fixed on the intended payment of current par funds. No scrip or indebtedness was paid to laborers, except when at par, or discounted to par funds at the time. The same, also, in payment for materials or goods. There was but one price for labor by the day or month, and that was always understood to be for cash. From the first of May, 1838, to the stopping of the work on sections five and six, the witness speaks of all the cases which fell within his observation or knowledge. He was acquainted with many of the contractors, and their connection with the public works was generally disastrous, and in most cases ruinous to them.

George Steel, on behalf of claimants, sworn. Says witness was a contractor and one of the claimants. Has known of contractors buying cattle and provisions by paying half cash and half scrip; usually paid more than they could have bought the same for in cash. Scrip traded off in this way brought more than when sold to brokers. This was in the years of 1840 and 1841. Has known of cases where laborers were to receive part pay in scrip and part goods; but the men generally took their pay in goods, preferring to take goods to taking scrip at par, and they received very little scrip. Some of them were in debt for goods, and received no scrip. These are cases that fell under witness' observation. There may have been cases where the contractors had smaller stocks of goods and paid their men more scrip. I paid my men all cash, and Mr. Barnett paid his men in cash and goods at cash prices, and done a large amount of work after the indebtedness was issued. Witness knows of Mr. Barnett's borrowing fifteen thousand dollars, and kept his scrip. Thinks he now has from sixty to eighty thousand dollars. He, Mr. Barnett, told me about a year ago that he had from sixty to eighty thousand dollars. Witness knows from his own case and from information in regard to others that all the contractors, for some months, paid more or less cash. This was in the year 1841. The effect of Mr. Barnett and others paying cash to their hands was to render it difficult for other contractors to get hands without paying cash or a higher price in scrip. He does not know that other contractors paid a higher price in scrip. Heard them complain of the prejudicial effect of these cash payments. Witness knows of a dozen or more contractors who finished their contract in the years of 1841 and 1842. Mr. Matteson, Mr. Blanchard & Co., Steel & Aymer, among the number. Could name several other heavy contracts that were finished.

Cross-Examined.—In the winter of 1838 and 1839 provisions fell fifty per cent. from what it was in 1837, and labor from twenty to twenty-five per cent. Most of the contracts in 1838 and 1839, taken at lower rates, to correspond with the lower price of labor and provi-

sions. The prices of provisions and labor was about the same in 1841 and 1842 as in 1839. Labor had fallen, and was very low in the winters of 1837 and 1838. He knew of contractors—Mr. Negus, Mr. Armstrong, Mr. Harvey, as well as himself—who bought a few lots at the sale of 1843. They had not the scrip to buy with, having hypothecated with the broker their scrip to raise funds to finish their contracts, and very few of the contractors bought.

D. L. Roberts, on behalf of the claimants, sworn. Says he was a contractor, and one of the claimants. Witness has heard the testimony of George Steel, and believes it to be, in the main, correct, and does not know it to be incorrect in any particular.

Cross-Examined.—Witness had a sub-contract as well as an original contract. As such sub-contractor he was to receive one-third cash, as the work progressed, and the balance when the state paid the contractor. The contractor failed, and witness made a compromise with him and received state indebtedness—a considerable larger amount than would have been due if taken at par. The contractor had received some of his pay from the state in indebtedness. Witness considers he is not yet paid according to his contract, but he took what he received by way of compromise, the contractor being insolvent. Mr. Bracken, the contractor referred to, paid the hands in his employ cash.

Re-examined.—Witness does not know of any other sub-contractor. Witness thinks the cause of Mr. Bracken's failure was the state not paying him in cash, according to contract. Does not know of any contractor, except Mr. Barnett, who yet holds state indebtedness. Witness knew many of the contractors and their circumstances at the time, and in his opinion most of them were broken down by losses on their contracts; and most of them parted with their indebtedness while it sold at a low figure.

James E. Bishop, on behalf of the state, sworn. Says, knows of but very few sub-contracts, and as far as his knowledge extends the sub-contractors were paid in cash. That was his practice with his sub-contractors.

Cross-Examined.—Witness, as a general thing, at first kept his indebtedness, hoping that the state would make it good. Witness sold a portion of his scrip at fifty cents on the dollar, for groceries and supplies for the men, about the year 1841, and paid the same out to other men at fair cash prices. The men received nearly all of their pay in goods, taking little, if any, scrip. What scrip I paid they took at par. After the bonds and scrip had fallen lower I sold two bonds in this city at eighteen cents on the dollar, which was the highest price in the market. Some contractors, before scrip had fallen so much, made an arrangement with their hands to take it at par. The hands, however, ceased to take it after a short time. While the arrangement existed the young men generally left the work, and the work was done by men of families, who received their pay principally in goods at the cash market rates.

Joel Manning, on behalf of claimants, sworn. Says, witness commenced as secretary of the canal board in 1836, and continued as such until the canal passed into the hands of the present trustees.

Witness, as such secretary, some time since, gave certificates to various contractors upon the canal, to be used in presenting their claims to the legislature, which certificates are true in all matters of which they certify. These certificates are on file with the papers of the respective claims, and are now here in the hands and control of N. W. Edwards, counsel for the state. A list of the names of the claimants to whose claims these certificates apply, is on a sheet herewith filed, marked "General Evidence—A." Witness has examined the contract filed in the case of Stephens, Douglass and Norton, and all the other contracts were given in the same form, except the contracts made under the Morris letting. Witness has examined the originals of the documents reported on pages 17, 18, 19, 20, 21 and 23 of the Reports of the session of 1840 and 1841. To the best of his knowledge they are true copies of the originals.

Cross-Examined.—The papers, Nos. 2 and 3, pages 18 and 19, of the Reports of session of 1840 and 1841, were signed by all the contractors who received money under the Thornton loan. The other documents referred to were signed by the parties whose names are attached to the documents in said Reports. The contracts referred to in Mr. Steele's testimony were surrendered in 1837 and 1838. The following is a true copy of the instrument signed by the persons who availed themselves of the law named in the instrument:

"To Gholson Kercheval, James Mitchell and William M. Jackson, assessors of damages on the Illinois and Michigan canal:

"We, George Armour, Adam Lamb, and Richard McFadden, assignee of Thomas Williams, by Joel Manning, attorney in fact for said McFadden and Thomas Williams, contractors on the Illinois and Michigan canal, for the purpose of availing themselves of the privileges and benefits conferred upon them by an act entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved February 21, 1843, do hereby apply for an appraisal, according to the provisions of said act, of the actual damages which they will sustain in being deprived of their contracts on sections number twenty-five and twenty-six, on the summit division of the Illinois and Michigan canal; and we do hereby consent and agree that such appraisal and assessment of damages shall be made without allowing them any prospective damages, or any profits which they might have made had they finished said jobs or contracts. Dated at Lockport, Illinois, this twenty-sixth day of September, A. D. 1843.

"ADAM LAMB,
"GEO. ARMOUR,
By Geo. Steele, his attorney.
"THOMAS WILLIAMS,
"RICHARD McFADDEN,
By J. Manning, his attorney."

The following is a list of sections and other work upon the Illinois and Michigan canal, let by the canal board from and after and including the lettings on the 20th and 22d days of September, 1841, during

the presidency of Mr. Morris, containing dates, jobs of work, and names of contractors:

Date of letting.	Job of work.	Names of contractors.
1841, Sept. 22	Secs. 109, 112, 126, 151, 153, and stone culvert over Nettle creek,	John Lafferty, Thomas McKown, J. G. Patterson.
"	Secs. 110, 111, 131, and 132, - -	Walter D. McDonald, Michael Williams, and Michael McDonald.
"	Secs. 113, 121, 122, -	M. Benjamin.
"	117 - - -	Titus H. Abbott.
"	118, - - -	M. Mott and F. L. Owens.
"	119, 120, - -	Jacob Francis.
"	123, 136, 137, -	Thos. Galleher & Co.
"	124, - - -	James Mullany.
"	125, - - -	John Darlin, Lot Whitcomb.
"	127, - - -	James Cronan & Co.
"	128, 129, - -	Thomas Beale, Norton Twitchell.
"	130, 133, 134, 138,	H. L. Galleher & Co.
"	135, 142, - -	Wm, Reddick, Thomas O'Sullivan.
"	139, - - -	Patrick Kenney & Co.
"	140, - - -	Patrick and John Kelley.
"	141, - - -	Thos. W. Hennessy, and J. Brennon & Co.
"	143, 144, 145, 146,	Timothy Kelly, and Jer. Crotty & Co.
"	Secs. 147, 149, 154, and stone culverts on sections 112, 149, 154, -	Michael Kennedy, Patrick M. Kilduff, and B. Duffy & Co.
"	Secs. 148, 150, - -	George Armour and Adam Lamb.
"	Locks Nos. 9 and 10, -	M. Kennedy, P. M. Kilduff, and B. Duffy and Co.
"	Sect 152, - - -	Dennis Kelley and Timothy Kelley.
"	Wood culverts:	
"	On secs. 119 and 121, -	Thos. Campbell and John McGirr.
	134, 141, 136. -	Lafferty & Larkin.
	142, - -	R. Johnson.
"	Stone culverts on secs. 145 and 148, - -	Michael Killela.
"	Au Sable aqueduct, lock No. 8, - - -	James Kinsley.
"	Secs. 114, 115, 116, -	Buck Van Alstine.
24	161, - - -	Hauley & Healy.
1842, Jan. 28	130, - - -	Walter McDonald & Michael Williams.
"	123, - - -	James Burk.
Feb. 18	143, 144, 145, 146,	Jeremiah Crotty.
"	109, 112, 126, 151, 153, and Nettle creek aqueduct,	Declared abandoned.
"	125, - - -	William E. Armstrong.
23	Culverts on secs. 134, 136 and 141, - -	A. D. Butterfield, and C. L. Lukens.
Apr. 21	Sec. 118, - - -	Andrew Kinsley.
June 7	141, - - -	Rich'd Cody, Tho. Hennesay, Chas. Bannon.
"	125, - - -	William E Armstrong, Jas. Hart.
8	153, - - -	Timothy Kelley.
Oct. 28	109, 112, 114, 116, 117, 123, 126, 133, 134, 136, 137, 138, 139, 140, 151, 153, - - -	Declared abandoned.
"	Sec. 130, - - -	Declared abandoned.
"	134, - - -	Thos. Larkin.
"	138, - - -	Maher & Castello.

At the "Morris lettings" the following order was made and posted up in a public place, and was so understood, in the opinion of the witness, by the contractors under that letting:

"*Ordered*, That the following be the conditions of letting the forty-six sections advertised for contract this day:

"1st. If no more acceptable arrangement can be made, the governor has promised to place in the hands of the commissioners state bonds, to be paid out to contractors at par, from time to time, as they are earned."—Made Sep. 20, 1841.

From the spring of 1841 to the winter following, we received orders from the contractors in favor of laborers and others, registered the orders, and, when requested, gave the bearer written acceptances; and during the winter of of 1841 and 1842 we received what is called canal indebtedness, with which the orders and acceptances were redeemed when called for. Most of them were called for.

Re-examined.—Does not know what amount of these orders was presented by the laborers. Thinks considerable proportion were so presented. Does not know at what rate these orders were received from the contractors. They were drawn for so many dollars and cents. Knows that some contracts were completed after the work was generally abandoned in 1841. Among them were Steele and Aymer, Blanchard & Co., Roberts & Co., and others.

Mr. Edwards, attorney for the state, offered the journals of the legislature, messages of the governor, reports of the commissioners, engineers, and other officers under the canal laws, the report of Gen. Thornton on the "Thornton loan," printed correspondence between the governor and Gen. Thornton, and between Gen. Thornton and the contractors and others, relating to the disposition of bonds; also, the correspondence and agreement between Gen. Thornton and the contractors, as evidence. The documents are referred to and considered as evidence, to save copying, and extracts of which are in the report of the counsel for the state.

The counsel for claimants objected to the reception, as evidence, of reports of "engineers and other officers" under the canal laws, not acting on behalf of the contractors.

Springfield.—Isaac N. Morris, on behalf of the state, sworn. Says, was canal commissioner in 1841 and 1842, about two years. When I assumed the control in part of the canal, I found the treasury exhausted of money, or there was but a small amount of funds in it, and no provision had been made by the legislature to supply it. The question was raised whether the board should suspend operations upon the work altogether, or proceed with it, and pay scrip and bonds, if the bonds could be obtained from Gov. Carlin. Many of the contractors and others urged a new letting, and we informed them of the kind of payments we could make, and that if they became bidders they would have to receive it at par. They expressed a willingness to do this, and the board accordingly instructed Mr. Gooding, the chief engineer, to survey and make out a cash estimate of certain portions of the canal, which he did, and which was afterwards let out upon bids, the contractors, as I have stated, understanding they were to receive

payment, as I have expressed it, in scrip and bonds at par. The board did not believe they were authorized to pay scrip and bonds in any other way. I cannot now remember the names of the particular contractors, but I am satisfied that those engaged upon the work, as well as those who proposed to take contracts, knew there were no funds in the canal office, and that they must receive scrip and bonds in payment, at par, if they went on with the work or took new contracts. I never heard any of the contractors object to receiving scrip or bonds, in compliance with the foregoing understanding. By the word *scrip* I do not mean regular six per cent. canal scrip, for that the board, as they understood the law, were not authorized to issue; but I refer to certificates or canal indebtedness such as the board had stricken off and issued.

In the case of the claim of Haven & Haven, the claimants and the counsel for the state agreed that no further evidence should be introduced on either side in that case.

The *old* evidence, filed with the several claims, was admitted in evidence, and the right of cross-examination waived by the counsel for the state.

The undersigned further report, that during their sitting at Ottawa, C. L. Starbuck presented a claim for and on behalf of Andrew Kinsley, which claim the board refused to receive evidence upon, because of no sufficient evidence that it had been ever before presented.

That George Armour, Andrew Lamb and Thomas Williams, for the use of John and George Armour, presented a claim, founded on a decree of the Cook county circuit court, rendered June 5, 1852, and offered to prove the same, which was rejected by the board as a new claim.

That Alonzo Walbridge and Mary, his wife, William Johnson and Sarah, his wife, and Elias Keyes, for the use of Alonzo Walbridge, presented a claim for damages, arising out of the construction of the canal across sec. 14, township 33, range 4 east, part of the estate of Edward Keyes, deceased, and offered proof of the same, which was rejected by the board as a new claim.

The undersigned further report, that all the witnesses who testified before us were duly sworn, and gave their testimony under their oaths respectively.

All which is respectfully submitted.

A. LINCOLN,
NOAH JOHNSON.

January 7, 1853.

By way of supplement, we, the undersigned, submit, that while at Ottawa we engaged the use of the sheriff's office, with the expression of our belief that the state would make reasonable compensation for the same; that we so occupied said office three days; and that the sheriff's name is ——— Thorn.

We also state that on the 6th day of December, 1852, at Ottawa, we engaged Mr. R. E. Goodell, as clerk of our board; that he accompanied us to Chicago and thence to Springfield, and has been with us constantly up to the time of making this report.

We also state, that when we advertised the notice of our meeting, as mentioned in our report, we sent the same to the Ottawa Free Trader, Joliet Signal, and the Chicago Journal, with a note to the latter to request the other Chicago papers to copy; we mentioned that we supposed the state would foot the bills. None of the proprietors of the papers to whom we directly sent said notice, have presented a bill to us, but Alfred Dutch, proprietor of the Commercial Advertiser, who published under the request to copy, has presented us a bill of $3 00, which we suppose ought to be paid.

At the instance of the counsel for the state, Isaac N. Morris traveled from Quincy to Springfield, and appeared before us one day as a witness, for which we suppose he should be compensated.

As to ourselves, we state, that from the time we left our respective homes till we returned to Springfield, we were constantly engaged in this business; that we went to Chicago because we were satisfied we could save time by so doing. The bills below are correct in point of fact, and, as we suppose, are in accordance with the law:

State of Illinois to Noah Johnston, Dr.

To travel from Mount Vernon, by way of St. Louis, to Chicago, and back to Mount Vernon, by way of Naples, Springfield and St. Louis, 1,025 miles, - - -	$102 50
To 44 days service, - - - - -	176 00
	$278 50

State of Illinois to A. Lincoln, Dr.

To travel from Springfield, by way of Naples to Chicago, and back the same way, 650 miles, - - -	$65 00
To 21 days service, - - - - -	84 00
	$149 00

Note.—The difference in the number days charged by one and the other of us, arises from the fact, that a large part of the time Mr. Lincoln was at home attending to his own business, while Mr. Johnston was necessarily away from his home, and was also engaged a good deal of the time in this business.

State of Illinois to R. E. Goodell, Dr.

To travel from Ottawa to Chicago, thence to Springfield and back to Ottawa, 650 miles, - - - -	$65 00
To 32 days service, - - - - -	96 00
	$161 00

Respectfully submitted, this 7th of January, 1753.

A. LINCOLN,
N. JOHNSTON.

REPORT OF N. W. EDWARDS,

Attorney for the State, before the Commissioners appointed to investigate Claims against the State.

1. In relation to the Thornton Loan.—Gov. Carlin, in his message to the legislature, dated Nov. 20, 1840, says: "That in the month of March, 1840, Gen. Thornton and others, as a committee on the part of the canal contractors, visited me for the purpose of making arrangements to provide means to pay off the estimates as they would become due for the remaining parts of the year, alleging that, unless a positive assurance was given that the money would be forthcoming, to meet the estimates, the contractors would be forced to abandon their contracts, and that, in this event, general distress and bankruptcy would ensue, and consequently great loss to the state. Knowing that bonds could not, at that time, be sold at par, to raise money for that purpose, they proposed, on the part of the contractors, that bonds should be placed in the hands of suitable agents, to the probable amount of the estimates for the year, to be paid to them at par, to which I assented, conditioned that the bonds so paid should be placed in the hands of an agent whom I might approve, to be sold for their benefit, in our eastern cities, or a foreign market; to which condition they assented, and I therefore placed in the hands of Gen. Thornton, canal commissioner, $1,200,000 in bonds for that purpose. $1,000,000 has since been sold by him, in London, as agent for the contractors, at the rate of eighty-five per cent., which has enabled them to prosecute the work on the canal, throughout the season, with energy and success, and, as I am informed, without loss, as the reduction in the price of labor and materials has equaled the fifteen per cent. reduction on the bonds." Again, in the same message, he says, "It is proper that I should here remark, that I exceedingly regretted the necessity of paying the contractors with bonds, but as money could not be raised by a sale of them at par, to meet the estimates on the canal as they became due, and the contractors proposed to receive them at that rate, and hazard a sale on their own account, I felt constrained, from a sense of duty towards them and good faith on the part of the state, to place the bonds in the hands of the canal commissioner for their benefit." This extract shows very clearly that, in the governor's opinion, it was necessary to retain the fifteen per cent. to make it a par sale, and that he was well aware that he was not authorized to sell state bonds below par. He says, in the same message: "No alternative has been presented to my mind to meet the exigency, but the hypothecation or sale of state bonds, which cannot be done under existing laws." That the governor understood what was a sale of bonds at par, the following extract of a letter to R. M. Young, on page 363, Reports of session 1840–'41, dated Feb., 1840, will show: "An act passed the last session, allowing the canal commissioners to issue scrip to meet the liabilities of the canal, up to the 1st of March next; after which time the contractors propose to receive state bonds

at par, until funds can be procured. This plan I have no objections to, as it will tend to reduce the value of the bonds, and compel the contractors to sell them at any price they will command. But a portion of them allege that they cannot abandon the work: and it would appear unjust to refuse the payment of the estimates due them, in bonds at par. An act passed authorizing the issuing of bonds, and the sale of them, for canal purposes, the interest payable semi-annually. If it is possible, I hope you will effect a sale in the United States of $1,000,000; but the contract must be complete par at the place and in the currency where the contract is made. I am thus particular, in order to avoid future censure," &c. It seems that the legislature, which had just adjourned, had condemned a sale of bonds to Wright & Co., by Judge Young and John Reynolds, upon much more advantageous terms, to wit: 91 cents per 100, payable in London, because it was a sale under par, which Governor Carlin again alludes to in his letter to R. M. Young and John Reynolds, dated March 12, 1840. Reports of 1840–41, pages 369–70, as follows: "They, [speaking of the canal contractors,] further propose and request me to place in the hands of the canal commissioners, bonds equal to the probable amount of work to be done during the season from the first of March inst., altogether about $1,200,000, with instructions to sell the same at discretion, on such terms only, however, as will secure their legal par value to the state." In his letter, alluding to their contract with Wright & Co., he says, "I cannot, however, now approve that contract, as the last legislature was altogether opposed to it. But I, notwithstanding, believe that it is better, on the score of expediency, than can be done elsewhere; and would therefore be glad if the contractors could avail themselves of it; but, on reflection, I cannot see how it is possible, unless they should first avail themselves of the bonds, and enter into the contract, through an agent of their own." Again, in his letter to Gen. Thornton, on page 25 of same report, he says: "As it is highly desirable to redeem, as early as possible, all the checks or scrip issued by the canal commissioners under the authority of an act of the general assembly, approved on the 1st of February last, you will, in sales of bonds on account of the canal funds, receive said checks or scrip as lawful money of the United States, taking care to secure to the state the par value of the bonds." The committee of finance in the house, and the joint judiciary committee of both houses, at the extra session of 1838–40, had declared the following explanation of the term par: 1st. When a security is sold in the same place where it is made payable, or, in other words, when the money is to be received and repaid at the same place and in the same currency, then no exchange enters into the calculation; but the nominal par is the true par—one hundred dollars must be received for every hundred dollars to be repaid, in order to constitute a par sale. 2d. When a security is sold and the money received for it in one place and the security is made payable in a different place, where the money received, either by a difference of currency or the price of exchange is worth more or less than it is worth at the place where received, here the nominal par is not the true par, and the true par will either exceed or fall short of the nominal par, according to the comparative value of the

currency in the two places, or the rate of exchange between them."—House journal, pages 169 to 274. These definitions do not express more clearly what shall constitute a sale at par, than the instruction given by Gov. Carlin, in reference to this same loan, that "the contract must be complete par at the place and in the currency where the contract is made;" and the same view is taken by Gen. Thornton, who was the agent of the contractors, and interested in the amount to be paid them, as he was to receive a per centage for his services, as will be seen from the following extract from his report on this subject:

Report of 1840–41, page 29. "In answer to the inquiry of the senate, whether the sale of bonds to the agent of the contractors by the governor, provision was made to pay the state the difference of exchange between the United States and the place where said bonds are payable, I have the honor to state, that the whole of the exchange already and yet to be realized has been secured to the canal fund. I was not at liberty to do otherwise, unless in violation of a conviction that the true par of a state bond is the precise amount that the state must pay to redeem it, and that the rate of interest on the money received must be no greater than that promised in the bond. As the agent of the contractors, I was authorised to sell bonds of a thousand dollars each, payable in New York, or of two hundred and twenty-pounds each, payable in London, as, in my opinion, might best subserve their interests; and with that view I decided, after I arrived in London, on selling sterling pounds, payable there, which brought eighty-three per cent., while dollar bonds, payable in the United States, would not have commanded more than seventy-three, if, indeed, they could have been sold at all."

It will be seen from this extract, that this was the view also of the legislature, then in session, calling upon him to know whether the exchange was paid to the state. 2d. In order to secure the state against loss, it was necessary for him to retain the difference between the par value of the bonds and the price for which they were sold. 3d. That in all bonds to be disposed of, and the proceeds received in the United States, they were made payable in the United States. That the contractors were well satisfied with this arrangement, will appear from the fact that, after these funds were exhausted, a portion of the contractors proposed to receive bonds at par for the estimates due them; and bonds were accordingly paid to them to the amount of $197,000, at par, and made payable in the United States, in years 1841–42, when they were much lower in price, as will appear from the governor's message—Reports of 1842–43, page 16. A list of which bonds, and to whom paid, may be found in the House Reports of same session, page 72. The contractors object to the large amount of exchange retained by the state, but it is apparent that this can make no difference, because, if there had been no exchange, there would have been no other alternative than for them to make good to the state the fifteen per cent., as will appear from their express contract, entered into and executed by all of them, referred to in the evidence as paper No. 2, page 17, Reports of H. R. for 1840–'41, and

from which the following is an extract: "And whereas the existing laws of the state of Illinois do not authorize or permit a sale of said bonds on account of the state, at a less rate than par value, which the undersigned supposes to be at a higher rate than can now be obtained for them, the undersigned, therefore, hereby agree to pay, account for, or allow to the board of commissioners, the difference between the par value of said bonds, and the price at which the said Thornton, as attorney aforesaid, may sell, hypothecate, or otherwise dispose of the same, or any part thereof." They further agree, as will also appear from this contract, that the commissioners may deduct from the amount due them, a sum sufficient to pay the difference between the par value and the amount for which said bonds may be sold. Here, then, is an express agreement and contract to account to the state for the difference between the par value and the price at which the bonds were sold by Gen. Thornton. If, then, the bonds, payable in London, were sold at the rate of eighty-five per cent., it was a sale of fifteen per cent. below par, and which, by their voluntary proposition and agreement, the contractors had agreed to account for to the state; and it is a fortunate circumstance for the contractors that they have been able to make good this difference by the rate of exchange. The contractors not only agreed to pay the state the difference between the par value and the amount for which the bonds were sold, but afterwards passed a resolution, as follows: "Resolved, that the commissioners are hereby instructed to dispose of bonds furnished in accordance with the foregoing resolution, (alluding to the bonds to be sold by Gen. Thornton,) to the best possible advantage, at any price they may think proper, not less than seventy-five cents on the dollar, in par funds, in New York." See Reports House Representatives, 1840–'41, page 73. Thus showing that the contractors would be satisfied with a sale at that price; and on page 28, Gen. Thornton adds, "that the contract has received the formal approbation of your excellency, of the board of commissioners, and the contractors, unanimously." And the treasurer, in his report, dated Dec. 7, 1840, page 132, House Reports, 1840–'41, referring to this subject says: "And deducted for loss on sales of canal bonds, by Gen. Thornton, as agreed to and sanctioned by said contractors." Again, the treasurer, in his report of Nov. 30, 1842, House Reports, 1842–'43, page 86, says: "To which was added, on account of loss on state bonds, sold by General Thornton, as agreed to by the contractors, to make those at par to the state."

The contractors also claim damages, because they received scrip at par, when it was worth only from seventy-five to eighty cents to the dollar. It appears that what is called scrip was issued, bearing interest, in pursuance of the 9th section of the amendatory law in relation to the canal, approved February 1, 1840, to the contractors, for the amount due them on the first of March of that year. This scrip was issued on the first of March, 1840, previous to Gen. Thornton's negotiation, and at a time when Messrs. Young and Reynolds had just completed a negotiation for state bonds at 91 cents to the dollar, in London. It was at that time made receivable for canal lands and lots, and was directed by the governor to be re-

ceived in all sales of bonds on account of the canal fund, as will appear from his letter to Gen. Thornton, Reports 1840–'41, page 41, in which he says: "As it is highly desirable to redeem, as early as possible, all the checks or scrip issued by the canal commissioners, you will, in all sales of bonds on account of the canal fund, receive said checks or scrip as lawful money of the United States, taking care to secure the state the par value of the bonds." This scrip was issued because it was more convenient for the contractors, and was authorized to be convertible into bonds, which I have already shown were agreed to be taken at par, even in the year subsequent to the issuing of the scrip—as these checks or scrip were limited to the payment due in March. It appears from the reports of the canal commissioners for that year, page 68, House Reports, that the contractors had come to the "determination to purchase bonds at par, payable in work at existing prices," rather than abandon their contracts. Relinquishments were at this time accepted from every contractor who thought it advisable to close his accounts, and to relieve the state from any claim whatever on account of damages; and in all the work put under contract, or abandoned work re-let, from the year 1840 to 1842, the commissioners were careful to have them so "guarded as to exclude damages, in the event of a suspension"—page 69, same vol. It is evident, then, that the contractors only agreed to take the bonds, because there was no authority to issue any more scrip; and, as scrip bore the same interest, it was more convenient on account of its being issued in smaller amounts, and could be convertible into bonds, there would be no more right to claim any deduction on account of their being below par, than in case of bonds which they had agreed to receive at par. That the scrip was more valuable at the time of its issue than bonds, I need only refer you to the affidavits of the respective complainants, and the rate at which Gen. Thornton says he could have sold bonds, in New York, at that time. Upon what principle, then, can they claim damages in the case of the scrip, which was issued to suit their convenience, and preferable to the bonds, for the reasons above stated? With the view to enable the contractors to go on with their work, and to create a demand for what was called state indebtedness, which was not so valuable as scrip, as it bore no interest, it was agreed to hold sales of lands and lots, and receive it in payment. And two sales were held, the first 1841, and the other in 1842—the aggregate of which sales amounted to $286,758 04—House Reports, 1842–'3, page 60. All the above scrip appears to have been dated and issued in March, 1840. And it appears, from the evidence, that at the time of its issue it passed readily at par, in trade, but subsequently depreciated; "and some of the contractors, before it had fallen much, had made an arrangement with their hands to take it at par." See the evidence of Mr. Bishop, Mr. True, and Mr. Brand. In House Reports, 1842–'43, from page 89 to 90, will be seen a list of lands and lots sold to contractors and others, for which payment was made in any kind of canal indebtedness. The governor states, in his message already referred to, that the reduction in the price of labor and provisions was equal, as he was informed, to the loss on the Thornton

loan; and such would seem to be the fact, from the following in relation to what are called "Morris lettings" "But this fact will appear in a still more striking point of view, by comparing the former with subsequent estimates. The first estimate was made in 1836, and amounted to $505,307 98. The aggregate amount of the estimates made in 1841, was $449,310 05, and the work was awarded at $63,134 01 less than this estimate; which subtracted from it, and the remainder deducted from $505,307 98, will show a difference in favor of the last letting of $119,131 94, compared with the estimates of 1836." See report of commissioners, House Reports, 1842–'43, page 53. This difference will appear much greater, when the further fact is stated, that in this last letting it was understood and expected that the pay would be received in state bonds at par—a list of which contracts, and to whom let, is furnished in the evidence. At the session of the years 1840–'41, it appears that the agents of the contractors proposed to complete the canal, within three years, at the prices for which the contracts had been let, and at the estimnted prices when not under contract, and receive their pay in state bonds at par. See Reports, 1840–41, pages 396 and 404. It also appears in evidence, and from the acts of the legislature, that on all kinds of canal indebtedness provision was made for the payment of interest from date, although a portion, when issued, bore no interest.

There is also a claim for depreciation of what is called and known as "governor's scrip," which was issued to pay damages. The law under which this scrip was issued, authorized a board of appraisers to estimate the damages, and directed the payment to be made in this scrip. Revised Statutes, page 613.

There is also another class of claims for damages, in consequence of contractors being deprived of their contracts, in all of which the claimants not only submitted their claims to the board of appraisers, appointed by law to award them their actual damages, but signed an agreement in writing, assenting to it, and waiving all right to any prospective damages or profits, which they might have made on their contracts. This decision the law expressly declared should be final, unless appealed from in thirty days to the circuit court of the proper county. From the decision of this board of appraisers, a few appeals were taken, which were nearly all disposed of without any increase of damages. (See Vol. H. R.) In these cases the contractors had their damages awarded them, from which, if they were dissatisfied, the right of appeal to the courts was granted.

There is still another class, on account of the estimates of the engineers on their contracts, some alleging that there were errors in the estimate, and others that they were not paid for the quantity of the work done. From a copy of the contracts, in several of the cases, which is admitted to be the form of all, the following stipulation was made: "It is mutually agreed that the said works, during their progress, shall be subject to the examination and inspection of the board of trustees and their agents, and to prevent all disputes and misunderstandings, it is mutually agreed, that the chief engineer shall determine the amount or quantity of the several kinds of work herein

contracted to be done, and decide every question which can or may arise relating to the execution of this contract on the part of said contractor, and his estimate shall be final and conclusive." The supreme court of the state in the case of the canal trustees vs. Lynch, 5 Gilman, page 522, have decided that, before a party could be permitted to prove that the chief engineer's estimate of his work is erroneous, he must first show said estimate to be fraudulent, or that the chief engineer unreasonably refused to make a re-estimate, after an agreement between the parties that his former estimates should not be final, and that a remeasurement should be made. The contract was voluntary, and the court say "neither party is at liberty to disregard it, nor can the court make for the parties a contract different from that which the parties have made for themselves."

Another class of claims is, for damages in consequence of the construction of the canal and feeders through the land of the claimants. The act of congress of 1827, authorizing the state to construct the canal, required that so soon as the state should locate the route of the canal, it shall be the duty of the governor, or such other persons as may be authorized, to superintend the construction of the canal. There is, then, an unlimited power and authority given by the general government, who was the owner of the lands at the time, to the persons employed by the state, not only to construct it upon what plan they might think proper and best, but to do every act, so far as the general government is concerned, necessary to carry into full execution the power conferred. The power was given to enter upon the lands for the purpose of making the canal, and that the state so understood it as early as 1829, and in subsequent acts on the subject of the canal, it was provided that it shall be lawful for the commissioners to enter and take of, and use, any lands, waters and streams necessary for the prosecution of the works intended by this act. This power is broad and comprehensive, and is intended to be applied to all lands, held either by the state, or by the general government; and is equally applicable to the 16th section, a right of way over which the state had an undoubted right to reserve or grant. That this power or direction was not reserved to canal lands, it is only necessary to reply, that the right to their use could not be questioned or disputed, to give authority to her agents to enter upon any lands, waters or streams that were necessary for the prosecution of the works intended by the acts both of congress and the state. It is very clear that subsequent purchasers took it subject to the condition upon which their grantor held. I refer to extracts of the laws of the state and congress in the report of the select committees on claims against the state, at the last session of the legislature. Another objection against these claims is, that the canal laws not only provided a mode for acquiring the right of way and damages, but there was also the right under the general laws of the land, and the parties stood by without taking any steps to enjoin the agents of the state, and acquiesced in the right without setting up any claim until 1849. Although I think there can be no doubt on this subject, I hold it equally clear that, if it should be decided to pay any damages, they should be estimated according to the value

at the time the state took possession, and that in the estimate, the benefit as well as the injury should be taken into consideration. That the benefit arising from the construction of a canal to the lands on its borders is different from railroads in this respect, that every point of the canal is a depot, and therefore the benefit and advantages are much greater than lands adjoining, but not bordering on the canal. I therefore introduced testimony to show the value of the land at the time of its appropriation by the state, the benefits arising from the construction of the canal, and its present value. The most, if not all of this class of cases is for damages to lands near Ottawa, and in cases where the amount of damages claimed is from six to ten thousand dollars for injury to eighty acre tracts, the evidence shows that the land was bought in 1837 for $2 50 per acre. Of one tract, thirty-three acres is now worth $1,000 per acre, seven acres $50 per acre, and the remaining forty acres $250 per acre; and that another tract, costing the same, is now worth $500 per acre. I give these as some of the instances, and the evidence will show the rest. This increase of price is, to a great extent, owing to the canal, and the location of the county seat by the state, at Ottawa, and a large donation of canal lots for the building of the court house. I contend, also, that it makes no difference whether the claimants bought the lands from the general government before or after the construction of the canal or feeders, as the original owners had, by a law which is notice to all subsequent purchasers, given the right. From statement marked B, it will appear that for any damage caused by the diversion of the waters of Fox river, to any interest on said river, the canal trustees are indemnified against by certain citizens of Ottawa.

The United States Bank has filed a claim against the state, and from the evidence on file, it not only appears that the transaction was illegal, but that the bank, after being notified that the legislature had failed to ratify the agreement between the bank and the fund commissioners, proceeded to sell, and had actually disposed of, nearly all of the hypothecated bonds, without waiting until the adjournment of the general assembly, then in session. It is for the legislature to decide whether, in a transaction which was illegal, and admitted in their own evidence to have been unauthorized, the state will pay to the United States Bank the loss on account of a sale of illegally hypothecated bonds, at a time materially affecting the credit of the state, and during the session of the legislature. It appears also, that the bank sold with a knowledge that the hypothecation was unauthorized by law.

In the case of the claim of Philo and Orlando Haven, I refer to the testimony filed by them, and two decisions of the supreme court, 5th Gilman, 148, and 11 Illinois, 554, for the facts, and the respective rights of the parties and the state, from which it will be seen that the line of the canal was known, and the dam built by the state was commenced about the time the Havens commenced theirs, and that it was generally understood as early as 1839, that the state had contracted for the building the dam and locks, which were built on canal lands bordering on both sides of the river, and that the Havens afterwards

built their dam on lots bordering on one side of the river only, and that these lots were on section 16, and were purchased by them of the state long after the state had directed the commissioners to use any lands, water or streams necessary for the construction of the canal, which, in my opinion, give the agents the right to construct the dam, and to divert the water, but whether this be the case, the supreme court has settled the question upon another point. They decide that the Havens, having a right to only one-half of the water, cannot use it, except as it is accustomed to flow down the channel, and that the erection of the dam across the stream, by means of which the head of water was increased, and the value of the site and improvements enhanced, was unauthorized. If, then, they had no authority to build the dam, and they could not run the mill by the use of one-half of the water as it flowed in its channel, they have no right to any damages from the state.

In reference to the contractors' claims, on account of the depreciation of scrip and state bonds, many of them, after being invited by the act of 1842-'43 to surrender their contracts because the state had no funds to pay, the state offering to pay them damages owing from their being deprived of their contracts, went on with their contracts, knowing the depreciation of state indebtedness of every kind. I allude to this for the purpose of showing that when the state was out of funds, they were not required to go on with the work, and as part of the claims are for depreciation since that time.

It is not denied that the contracts have all been closed, and that receipts have been given in full to the state, that payments have been made and accepted, and that the legislature is now called on to make extra allowances, which I think they have no right to do in any of the cases, without violating the provision of the new constitution providing "the general assembly shall never grant or authorize extra compensation to any public officer, agent, or contractor after the service shall have been rendered, or the contract entered into." Sec. 33, Art. 3, constitution.

The evidence also shows that some claimants applied, and others inquired whether they could have claims, based upon similar grounds with those on file, investigated by the commissioners, who decided that the law did not allow the presentation of new claims or an increase of those heretofore presented. As I cannot allude to the evidence and its application in each case, and it should be decided to have them investigated before committees of the legislature, it will be necessary for me to explain before the committees the object, and the connection which different parts of the evidence have to the respective cases.

A number of claims have been filed in the name of the claimants by others, when there is no evidence that the real parties have ever either made any application or authorized it to be done for them.

In some instances there are judgments against the state which have been paid, and no satisfaction entered on the records of the court. A reference to one for $5,000 may be found on page 482 of the journal of the House Representatives, in 1851.

In relation to the claim for damages on account of state bonds, none of which will be due until 1860, the state is under no moral, legal or equitable obligation to pay, and if the discount claimed by the contractors is allowed, the state will also have to pay the whole amount now outstanding, with interest on all from date, and compound interest after 1857, and our judges, state officers, and members of the legislature who receive their salaries in depreciated auditor's warrants, widows and orphans, and others who advanced their money on the plighted faith of the state, to pay the bonds with interest, and our contractors, under the internal improvement system, would be equally entitled to relief.

As there was some evidence at Chicago to show that whilst state bonds and other indebtedness had depreciated, labor and provisions had kept up, and, according to the statement of the witness, were as low in 1841-'42 as in 1839, I have prepared the following table, taken from Hunt's Merchants' Magazine, the United States patent office reports, and the reports of the secretary of the treasury, giving the prices of the leading articles of provisions in New York; also a statement of the amount of public lands sold in Illinois, for the purpose of showing that there was a general stagnation of business and great reduction of prices in the years 1840 to 1842:

Prices of leading articles of provisions in New York, from 1837 *to* 1843.

Year.	Flour per barrel.	Corn per bushel.	Wheat per bushel.	Mess pork.	Mess beef.	Cotton.
1837	$9 64	96	$1 83	$21 66	$14 28	
1838	8 09	81	1 54	21 97	14 98	
1839	6 99	87	1 42	19 32	14 90	14c.
1840	4 94	71	1 10	15 07	12 98	8
1841	5 61	59	1 03	11 36	9 25	10
1842	5 36	57	1 16	9 27	7 85	8
1843	4 83	42		10 32	7 46	6

Public lands sold in Illinois, from 1837 *to* 1842:

	Acres.		Acres.
1837, - -	1,012,849	1840, - -	389,275
1838, - -	778,560	1841, - -	335,553
1839, - -	1,132,876	1842, - -	437,404

Statement marked A contains a list of all the contractors on the canal, the date of their contract, and the time for completion, and in the House Reports 1842, page 80, will be found a list of jobs which remain unfinished on 1st December, 1842, from which it will appear that very few of the contracts have been completed according to the contract. See page 46.

Statement marked B (see page 51,) contains an extract from a contract entered into by certain citizens of Ottawa and the present board of canal trustees, by which they agree to indemnify the board of trustees against any claim for any damage done to any interest on Fox river, except interest at Dayton.

NINIAN W. EDWARDS,
Attorney for the State.

ARGUMENT OF S. T. LOGAN,

Attorney for Claimants, in reply to N. W. Edwards, Attorney for the State.

The undersigned, attorney for a part of the claimants, whose claims against the state are now under investigation, submits the following argument in support of the claims of his clients, and in answer to the argument of the attorney for the state, so far as the same relates to the claims of his clients.

A part of those claims arise from what is denominated in said argument, the "Thornton loan." This claim is made by certain contractors on the canal, for money retained by the canal board as part of the canal fund, which, as they allege, belonged to them and ought to have been paid over to them, and they now claim that the state justly owes them said sum of money, with interest thereon from the year 1840.

The general features of that transaction are no doubt fresh in the minds of the legislature. I shall only call attention to such circumstances connected with it as elucidate its true character, and show the rights of the parties.

The claimants had contracted with the state to do certain work on the canal, for which the state, on its part, had agreed to pay them stipulated prices, in cash, as the work progressed. The state had for some time after entering into the contract, been able to raise money by loans, and had complied with the contract, but in the spring of 1840 the state was in arrears with these contractors about $400,000, money which the contractors had earned and were entitled to receive, and which the state had failed to pay, according to contract. The work was still progressing; the contractors had provided hands, tools, and all the machinery and apparatus to enable them to comply with the contract on their part. They were in no default; the state was. To abandon their contracts would have been attended with immense loss to them, accompanied with great distress and general bankruptcy. They must submit to this or some smaller loss, if any means could be devised to lessen the disaster. And in this state of affairs General Thornton and others, as a committee, waited on Governor Carlin in the spring of 1840, as stated by Governor Carlin in his message first quoted by the attorney of the state. It is now presented as an argument against their claims, that the contractors were willing to receive bonds. So they were, for the same reason that any man prefers getting half his debt rather than lose the whole. Could they have got what the state contracted to pay them, and justly owed them, cash, no one believes that they would have been willing to receive depreciated bonds, but as they could not get money it was proposed and agreed on, that instead of money the state should pay them $1,000,000 in canal bonds at par, and the contractors should lose whatever amount of depreciation there might be on the bonds. The contractors were to take the bonds at par. The governor was authorized to

sell them at not less than par. What then was the par of the bonds in the contemplation of the contracting parties. A contract should always, by all fair tribunals, be carried out and enforced as the parties understood the contract at the time, and neither party should be required to do anything more, or receive anything less, than is understood at the time of the contract. The contract was made here in Illinois. The bonds were to be paid for in Illinois, by the contractors, by labor on the canal. If the contractors should not get par for them they were still to pay the par out of what the state owed or should owe them. That par, as we allege, was $1,000,000, in the money due them, and that this was so understood at the time by all the parties to the contract. And first, what was Governor Carlin's idea of par, according to the meaning of the act authorizing the issuing of these bonds? The letter of the governor to R. M. Young, dated February, 1840, is referred to, to prove what the governor understood by par. In that letter he says: "The contract must be complete par at the place and in the currency where the contract is made." Where then was this contract between the state and the contractors made? In Illinois, and the par must be in the currency of Illinois. What the governor really understood by par in making the sale, may be well proven by the fact that the same spring while these negotiations were pending, he affirmed the contract made by Judge Young with Wright & Co., for $1,000,000 of these same bonds, at 91 per cent. as a par sale, in the meaning of the law. This contract was confirmed by the letter of Governor Carlin to Young, dated 26th March, 1840. (See journal, page 371.) And again in his letter of 1st May, 1840, (see journal, page 374,) he gives the reason for confirming it as a par sale. And in that letter he says: "But I do believe it was a par sale, according to the meaning and intention of the legislature, at the time it was enacted." And the governor says truly, in the same letter, that such must have been the intention of the legislature, because they well knew when they ordered the sale of $4,000,000, that bonds could not be sold at par unless 93 cents, with the exchange, was par. In the sale to Wright & Co. par was not obtained, unless the difference in exchange was added to the price. So that Governor Carlin, in affirming the sale to Wright, decided that if the bonds were sold so that the price, with the exchange from London to New York, and from New York to Illinois, made up the price, the sale was at par so that the state got par in Illinois funds.

That Governor Carlin understood that par was the amount called for by the bonds, to wit, $1,000,000, is further shown by his letter to Judge Young, dated July 2, (page 389,) where, after stating his confirmation of the sale to Wright & Co., he says: "This I would have done in preference to the payment of bonds to contractors." Why should he have preferred Wright & Co.'s contract, by which the state got in Illinois for $1,000,000 of the same bonds the even sum of $1,000,000 in Illinois funds, if he understood that the contractors were to pay the state for the same amount of the same bonds $1,000,000, and the state was, in addition, to pocket $75,000 as difference in exchange; with due deference, it seem to the undersigned absurd to

contend with this letter before us, that Governor Carlin's understanding was that the contractors were to allow $1,000,000 for these bonds, and permit the state to retain the $75,000 of exchange; for if he had he could not have said he preferred the sale to Wright & Co., by which that $75,000 was lost. But what affords a more conclusive evidence, if possible, that Governor Carlin did not mean, and the contractors did not mean or intend that the contractors taking the whole proceeds of these bonds, exchange and all, should account to the state for any more than $1,000,000, is the letter of Governor Carlin to R. M. Young, dated 26th March, 1840. About the same time these bonds were sold to contractors, he says (page 371:) "But under existing circumstances, I have now concluded to take the responsibility of authorizing you to sell bonds to the amount of $1,200,000, provided you can realize par *in Illinois bank paper*. A sale at that rate would be as favorable to the state as to pay that amount of bonds to contractors at Chicago." Now if the sale of $1,200,000 of these same bonds for $1,200,000 in Illinois bank paper was as favorable to the state as to pay that amount of bonds to contractors at Chicago, it is most manifestly inconsistent with the assertion now made, that the contract with those contractors for $1,000,000 of bonds contemplated that these contractors should account for the $1,000,000, and leave $75,000 of exchange to the state. The contract in that case would be less favorable to the state by $75,000. Nor could the par contemplated by the parties in making the contract, have been anything else or different from the contractors paying $1,000,000 and having the whole proceeds of the bonds.

The parties did not define what they meant by the term par. Their meaning is therefore to be determined by their cotemporaneous acts and expressions. Just before this sale the canal commissioners had, under the authority of the governor, sold to various persons, principally or entirely to these contractors, one hundred bonds of £225 sterling each, issued under this same act of 1839, rating them at $100,000, at the price of $100,000—at par, as they could only be sold, although they were payable in the same sterling money, and exchange on New York was then from six to seven per cent., (see Reports 18-0, page 73.) Having just sold to the same persons bonds issued under the same act, charging them only $1000 for a bond of £225, if the governor intended to vary the terms, ought he not in fairness to have given notice, and when he sold without notice is it not clear that he intended the same par?

The attorney for the state, in his argument, says: "It seems that the legislature had just adjourned, had condemned a sale of bonds to Wright & Co., by Judge Young and John Reynolds, upon much more advantageous terms, to wit, 91 cents per $100, payable in London as a sale under par." It seems to the undersigned strange that any amount of prejudice against or hostility to these claims could warrant such an assertion, in direct opposition to the notorious history of legislation. The legislature did not condemn that sale. It refused or failed to condemn or repudiate it, notwithstanding the strenuous exertions of men of great talent and standing in the legislature, who

desired that the farther progress of improvement by borrowing money should cease, and the failure of the legislature to condemn or repudiate that contract was matter of great regret to many. The attorney perhaps may justify this assertion to his conscience by the quotation from Governor Carlin, of 12th March, to Young and Reynolds, in which he says: "I cannot, however, now approve that contract, as the last legislature was altogether opposed to it." Whatever may have caused Governor Carlin to make this statement in his letter of 12th March, which still does not justify the assertion of the attorney for the state, it is manifest that Governor Carlin soon corrected the statement, for in his letter to General Thornton, dated 30th April, 1840, in which he expresses his determination to confirm the contract with Wright & Co., he says: "This loan was considered by me as of doubtful character, as to its conformity to the law, under which it was made, and the conditions of the contract was therefore referred to the legislature at its last session, which, after being considered, was passed over without any definite action." See Reports, 1840, page 40.

And in his letter to R. M. Young, dated 1st May, 1840, (page 374,) he assigns as one of his reasons for confirming the contract with Wright & Co., he says: "2dly, because the action of the last legislature failed to repudiate your contract, although it was much animadverted on." A variety of expressions of the same kind might be quoted from Governor Carlin's correspondence. Whilst then the attorney quotes Governor Carlin, as evidence that the legislature condemned the contract, did not candor and fairness require that he should be fully and fairly quoted, and not an isolated expression used. Throughout, then, the whole negotiation, and up to the time when these bonds were sold by Thornton in London, Governor Carlin treated the term par as meaning $1,000,000 for this million of bonds, and it is not until the bonds were sold and the contractors fixed in their responsibility that we hear applied to this sale the technical or supposed accurate definition of *par*, and it is then applied to the loss of the contractors.

Again, it is said by the attorney for the state: "The contractors object to the large amount of exchange retained by the state, but it is apparent that this can make no difference, because if there had been no exchange there would have been no other alternative than for them to make good to the state the 15 per cent." And again: "It is a fortunate circumstance that they have been able to make good to the state this difference, by the rate of exchange." Must it not have been apparent to the attorney for the state, if his zeal had not blinded him, that the state retained all this exchange without allowing the contractors one cent credit for it? That they did not make up any part of their loss by this exchange, because the state took it all? That they still lost all the depreciation, not 15 per cent. only, but 17 per cent., besides paying General Thornton's expenses and commissions? They hoped to retain, and believed they were entitled to retain, all the exchange, to assist in paying the depreciation, but the state comes in and takes it by her sovereign power. And the state

not only takes out of their money 7½ per cent., the then rate of exchange on the money they got, but it takes it also on the money they lost; they charge and retain 7½ per cent. on the whole million, although they got in London only $830,000, and the exchange realized was only $62,250, so that really there was deducted from their money $12,750 of exchange which was never received at all.

The attorney speaks of their loss as 15 per cent., and the sale being at 85, but it was really, as General Thornton says in his report, at 83, two per cent. being retained by the purchasers as commissions. To set this matter plain, Thornton says in his report, page 30: "The whole amount of the proceeds of these bonds in New York, exchange and all, was $892,250. The exchange includes 7½ per cent., amounted to $62,250. This, with enough more to make it $75,000, was retained by the state and secured to the canal fund." (See same report, pages 29 and 73.) So that there was only left to the contractors $830,000, for $1,000,000 charged to them, leaving them to sustain the whole loss of 17 per cent., or $170,000, without any assistance from the exchanges. And under the action of the state there was *no* alternative but for them to make good to the state the 17 per cent.; and they were not enabled to make good to the state any part of the difference by the rate of exchange. It will be fortunate for them if the tardy justice of the state in now giving them these exchanges to which they are so justly entitled, shall enable them to make good a portion of their loss. This perhaps is the great secret of the hostility of the state's attorney to this claim. He supposes they have received their exchanges, and that they have assented to pay the depreciation, and that by them "they have been able to make good to the state" the depreciation of 17 per cent. But General Thornton says in his report, that the $75,000 of exchange on the proceeds of these bonds was paid into the canal fund, and not to these contractors. And the state received from the proceeds of this $1,000,000 of state bonds, $1,075,000, being $75,000 more than was ever received by the state for years before or afterwards, for the same amount of the same kind of bonds, and this $75,000 was made by the state by compelling the contractors, whom she had failed to pay what was justly due to them, to lose more than $170,000, besides paying the expenses and commission of the agent.

And will this legislature now withhold any longer this $75,000 thus obtained, in violation of the undoubted understanding under which the sale was made, and at the expense of those who, by the default of the state, have lost not only this $75,000 but at least $100,000 more, which they would have had if the state had complied with its engagements. The contractors claimed this promptly. It was denied by the state authorities, although General Thornton, president of the canal board, in his report (page 30,) confesses he thinks it would be just that they should have it.

It may well be admitted that Governor Carlin, at the time when he, before the session of 1839–40, refused to confirm the sale made to Wright & Co., entertained the opinion that a sale of bonds made in London at less than par there was not a sale at par, although the dif-

ference of exchange would bring the sale of bonds up to their nominal amount; and in his letter to Judge Young, before quoted, he still says it is not a literal compliance with the law, yet he asserts that it is a compliance with the meaning and intention of the legislature. And I presume I need not do more than state the rule, that acts of the legislature are to be construed according to the meaning and intention of the legislature.

But the question in deciding on this contract, is not what Governor Carlin once thought, or how he once intended to regulate the sale of the state bonds, but what was his opinion when this contract was made—and what did he do—and what he authorized these parties to believe was the par at which these bonds were sold to them—and whether these parties were induced by him to believe, and did believe, in entering into this contract, that what he recognized as par, in at that time confirming the sale to Wright & Co., was the par they were to make good to the state?

The sale to Wright & Co., then confirmed by the governor as a par sale, would have produced to the state, for a million of the same bonds, a million of dollars, including all exchanges. Had these contractors a right to expect, when the governor was making the contract with them, that a different rule of par was to be applied to them, by which they were to lose $75,000? If the governor intended to apply to them a different rule from that which he was then applying to Wright, and also a different rule from that by which he was then directing Judge Young to sell $1,200,000 of state bonds, he should, in fairness, have so stated to them. He should have said: gentlemen, contractors, I am confirming a sale of $1,000,000 of these bonds to Wright & Co., by which sale I am to receive $1,000,000 in Illinois, including exchange. I am directing Judge Young to sell $1,200,000 of these bonds to whoever may have the money to buy, in any way that I can realize for them $1,200,000 in Illinois bank paper; and both these sales are par sales in the meaning of the law; but as the state owes you—as the state does not pay you—as you must be reduced to distress and bankruptcy, unless you get money due you from the state, you are in my power, and you must make a million of these bonds good for $1,075,000, or you cannot have them. If he had said this, and the contractors had still taken the bonds, however hard and unjust the distinction, they would have been bound for the $1,075,000; but as they did not hear any thing like this from the governor—as the governor was recognizing, at the time, in all other cases, a million of dollars here as the par price of $1,000,000 of these bonds, the undersigned submits that the application of such a distinction now would be a fraud upon them. They were willing to lose any depreciation of price of bonds below the sale to Wright & Co., which was treated and recognized as a par sale; but they never contemplated that they were to lose, in addition to that, the exchange, amounting to $75,000.

It is insisted by the attorney for the state that the legislature repudiated the sale to Wright & Co., as not being made at par. The undersigned draws directly a contrary inference from the action of the legislature, and so it will be seen did Gov. Carlin, from

his confirmation of that sale, and his expressions in his correspondence with Thornton and Young. Gov. Carlin having doubts as to the legality of the sale, referred the question to the legislature. It was taken up in the legislature—referred to committees—majority and minority reports were made by committees in both houses, but no report was approved by the legislature. The contract was not repudiated or disaffirmed. If the legislature desired the contract to be abrogated, what was its plainest duty? No money had then been drawn on the contract. It might have been rescinded, without damage to any party; yet the legislature, knowing its agents had made such contract and intended to carry it into execution, does not disaffirm, or repudiate, or express any dissatisfaction with it. Could the legislature, after this and after the contract had been carried into execution, with any regard to good faith, repudiate it? How could it answer the question which might be put to it—why did you not, when the contract was communicated to you, before your agents got money on it, repudiate or find fault with the contract? Will you defraud us by standing by, seeing and knowing that your agents do such an act, and making no objection to it until they receive our money, and then make your objection when you are called on to pay? An individual, under such circumstances, would be estopped to deny the validity of the act, because such denial would be fraudulent. Could the legislature fairly answer: my committees reported against it? It would be objected—you did not approve or act on the opinion of your committees; they reported resolutions to rescind the contract, but you failed or refused to pass them. As well might you contend that the recommendation of your committees to pass a particular law made it a law, although you refused to pass it. And by the same parity of reason, if such a contract is reported to the legislature and left by it, without remark or reprobation, to be acted on, every one has a right to regard it as passing without objection, and to believe that like contracts will be treated in the same manner.

Claim for the depreciation of scrip, &c.—In the argument of the attorney of the state much stress is laid on the fact alleged, that the scrip received by the contractors was in more convenient form than bonds, was receivable for lands at valuation, and was convertible into bonds. Notwithstanding all these advantages, the fact is undeniable that the scrip was greatly depreciated, and that it was worth very much less than cash, which the state had agreed to pay. It was poor consolation to these contractors, who were in debt to hands who had done the work, for provisions, for horses, for machinery, for tools, for their family expenses, that they could buy land at valuation with their scrip. Those lands would not pay their debts—they must shave off the scrip, or make other sacrifices equivalent, to retain it. Nor is it a valid argument against their claim, that they, before or afterwards, received bonds, also depreciated. They received the scrip because the state would not, or could not, pay them any thing better, and they received the bonds for the same cause. One would almost conclude from the argument of the attorney for the state, that these contractors received depreciated scrip and bonds, because they preferred them to

the cash justly due them from the state. He says, and reiterates the statement, that the contractors were willing to receive scrip—they were willing to receive bonds. Why were they so willing? They were compelled to do it, by the default of the state and their own distress. If they did not get something they were reduced to bankruptcy. They were under duress. They had expended their means in the service of the state; but this was not all—they had contracted debts which they must pay. The state had not paid, would not, and could not pay them according to contract, yet they must pay according to contract or be bankrupt; it was better they should lose fifteen, twenty, or twenty-five per cent., than be bankrupt. But is is just, is it equitable, that a great and flourishing state should compel them to this alternative? And if the temporary embarrassment of the state has occasioned the wrong, will the state, in better circumstances, refuse redress for the wrong done in compelling these contractors to encounter so great a loss? It is further urged, on the part of the state, that these contractors might have abandoned their contracts, and thus escaped loss; but this is not so. Much of this depreciated paper was received, as will be clearly seen from the reports, for back per centage retained by the commissioners, and for work done long before the depreciation. But it is alleged they might have abandoned their contracts, and done no further work. This privilege was given on the condition that the contractors abandoned all claims for damages for the violation of the contract on the part of the state. The contractors were compelled to have machinery, tools, and other property, to enable them to perform their contract, amounting to many thousand dollars. One firm had machinery to the amount of $27,000. This was useless for any other purpose, and would be a dead loss if the contracts were abandoned. But the privilege of sustaining this loss is now gravely urged as a reason against granting any redress. Had they refused to receive the scrip, and abandoned their contracts, they must have lost all their machinery, discharged their hands without pay, turned them loose utterly destitute, and been themselves bankrupt. And all this because the state did not comply with its engagements. These results were most potent circumstances of duress to compel them to the receipt of that depreciated paper, in lieu of money; which may be a technical payment in law, but, before the world, cannot exempt the state from the obligation to give redress for the loss occasioned by its default.

An attempt is, seemingly, made by the attorney for the state to excite apprehension that if these claims are all allowed, all persons will claim to be remunerated for losses sustained by depreciation on state bonds. But there is, it is respectfully submitted, no other case like the case of contractors. The purchasers of state bonds took them voluntarily, making their calculation to make profit by them. They were free to choose. They sustained no loss if they did not buy—they still had their money and means within their own control, entire and undisturbed.

But the contractors were the only involuntary receivers of this scrip and bonds. They had trusted to the good faith and ability of

the state—they had been deceived. Ruin stared them in the face, on account of the default of the state; and they were obliged, by this impending ruin, to sustain the loss. Would any honorable man, who from his misfortune had compelled his neighbor to sustain such loss, refuse, in the day of his returning prosperity, to make good the loss? I think not. And, if not, will a great and magnanimous state be less just? It is said that this scrip passed readily at par, in trade, at the time of its issue. How this was, is explained by the evidence taken, to which reference is made. It was taken by merchants for some articles, probably such articles as were least saleable, but for other articles it was refused. And when taken, although it was taken nominally at par, yet prices were put on the articles to make up for the depreciation. And it is said, "some of the contractors, before it had fallen much, had made an arrangement with their hands to take it at par." But, when it had fallen, which was almost immediately, did they take it at par? No. The contractors had to sustain the depreciation. It is insisted the contractors ought to sustain this loss, because labor and provisions had fallen. How would this argument appear in the mouth of an individual? Could he claim the right to pay in depreciated paper for work for which he had contracted to pay money, because the price of labor and provisions had fallen? But the price of labor and provisions had not fallen when most of this money was earned. It had been earned long before, and not paid for—much of it being retained per centage. It will appear, by reference to House Reports, 1840, page 140, how large a sum was due for retained per centage. And this was a very large part of the debt for which depreciated scrip was received.

The argument of the attorney for the state to sustain the state in refusing to make redress for the violation of her contracts, so far as it rests on the ground of the fall in the price of labor and provisions, when the pay was earned which was received in depreciated scrip, if it were sound in morals, which is utterly denied, is unsustained in fact; because it clearly appears, from the documents to which the legislature is referred, that for very much the largest part of these payments the work had been done before there was any such fall in prices, and when there was no expectation, or reason to expect, that the state would pay any thing but money.

It is an abandonment of all argument against the justice of these claims, to appeal to the legislature against their allowance, because there are other claims, equally just, which it might be inconvenient to pay; to say that the claimants in this case, amongst whom there are now, also, widows and orphans, must not be relieved, because there are other widows and orphans, holders of state bonds, who have been injured or ruined by the default of the state.

It is assumed that the state must not do justice in this case, because it is making a precedent which may require justice to be done in other cases. It is submitted, that this is, at once, yielding the argument, and admitting that, so far as justice and equity is concerned, the state is bound to pay these claims. But will this be a precedent for other holders of state indebtedness. We contend that the principles on which

other state indebtedness stands is entirely different, and that if the legislature grants to the contractors that relief for which they appeal to the equity, the justice, and the magnanimity of the legislature, it affords no precedent for the purchasers of state bonds. As stated before, purchasers of bonds became so voluntarily, with the calculation of profit from the purchase. They were free to take, and free to refuse to purchase. They bought the bonds at the then current market price. The contractors were compelled to receive the scrip, not at its current market price, but at par, when it was greatly depreciated. The contractors were the only involuntary receivers of state indebtedness. The language of the state was not to them, receive this or hold your money, but receive this or get nothing, and be ruined.

The undersigned respectfully asks to call the attention of the legislature to the manifest inconsistency in the argument of the attorney for the state on these claims with that on the argument of the Thornton loan. Here he asks that their claim shall stand on the same footing with the claims of all other purchasers of state indebtedness, but in that no! Although no other purchaser was ever charged with the exchange, these contractors must be! The sale to these contractors, as against their remonstrances it appears on the report of the sales, stands out in bold and distinguished relief, yielding the state $1,075,000 for a million of bonds, besides the exchange from New York to Illinois, when they show no other sale of a million of bonds for even so much as a million of dollars.

The sale to Wright & Co., approved at that time, would have been a fraction less than a million of dollars in New York for a million of the same kind of bonds. It will be seen, (see Reports of 1840–'41, page 73,) that one million of dollars in the same kind of bonds, (£225 sterling, redeemable in London,) was sold by Gen. Rawlings and Governor Reynolds to the Bank of the United States for $976,396 67, under the same act of 1839; $150,000 of the same kind of bonds, under the same act, to Wright & Co., for $148,785. But when the canal board comes to fix the price to these contractors, whom they had in their power, under the same law, they fix it at $1,075,000, at New York, and retain the exchange from New York here. So that the contractors under the Thornton loan are made to lose $75,000, and the exchange from New York to Illinois, by comparison with any other purchasers of bonds, issued under the same law. So that, by the argument, when contractors lose by being unequal they shall be unequal; but when they lose by a rule of equality they shall be equal. The attorney's idea of a fair game seems to be, "heads, I win; tails, you lose."

An argument, if it may be called an argument, is attempted to be drawn from Gen. Thornton making his report in favor of the state for the exchanges, because Gen. Thornton was the agent of the contractors for selling these bonds. General Thornton was president of the board of canal commissioners, and was also the agent of the governor; and the governor refused to let these bonds go immediately into the hands of contractors, for two reasons. First—the whole amount was not then due to the contractors, but was to pay what was due, and also

for continuing the work during the spring and summer; and the proceeds of the bonds were to remain in the hands of the canal board until they were paid out as the work progressed. Second—Governor Carlin apprehended that if the bonds were put into the hands of contractors, they putting them in parcels into the market, without concert, might further depreciate state bonds, and prevent the sales in future.

Thornton and the canal board, to make themselves safe, and without the consent of the contractors, charged these bonds at $1,075,000. But, if the opinion of the mutual agent of both parties can avail anything, Gen. Thornton's opinion is expressed in the report, when he confesses that he thinks it just that the state should allow the exchange to the contractors.

In conclusion, I wish to remark, that those whom I represent are not interested in the claims under what are called the "Morris lettings," nor any of the other claims. He would not wish to depreciate them by passing them over, but leaves them to be advocated by those having an interest therein. He claims, in this argument, only for those whose contracts were made prior to 1840, and when the state expected to pay, and the contractors believed they should receive their pay in money.

The undersigned has not thought proper to swell this argument by lengthy and one-sided quotations from the testimony or the reports of the legislature, as they are all, in full connection, before the legislature. He has seen, with great regret, that the attorney for the state, or some one else, has thought fit to publish in the Alton Telegraph, and extensively circulate, his argument and extracts from the journals and testimony, taken out of their connection and separate from other portions which explain them and the true nature of the transaction. It has too much the appearance of attempting to forestall the opinion of the legislature and the public, by a one-sided view of the question, to commend it to the approbation of those who desire the state to escape the odium of repudiation which may attach on it, not only by refusing to pay what is acknowleged to be due, but just as strongly by refusing a fair and candid investigation of that which is claimed to be due.

STEPHEN T. LOGAN,
Att'y for claimants.

In so far as relates to the claim of the assignees of the United States Bank, I would only state that a large portion of it arises out of an error in computation, which is palpable on examination. Another part of it is for money actually advanced in good faith to the authorized agents of the state. These portions of that claim are too obviously founded in justice and law to admit of controversy or evasion.

S. T. LOGAN, *Att'y.*

(A.)

Statement of Contracts on the Illinois and Michigan Canal.

Names.	Section.	Date of contract.	Time of completion.	Remarks.
N. Mallory & E. B. Hurlbut.	No. 2	July 18, 1838.	Nov. 14, 1840.	Fish claims under Mallory.
Wm. Osborne & Wm. W. Stewart.	3	"	June 5, 1841.	
same	4	17	"	
W. B. Ogden & G. W. Dole,	5	June 16, 1838.	June 1, 1841.	
same	6	"	"	
Harmons, Loomis & Raymond.	7	Jan. 22, 1838.	Nov. 14, 1840.	
	8	"	"	
	9	"	"	
Temple & Canaer,	10	July 9, 1838.	July 9, 1841.	
same	11	"	"	
same	12	"	"	
Greenwood & Bishop,	13	June 15, 1837.	May 20, 1840.	
same	14	"	"	
same	15	"	"	
Greenwood, Osborne & Strail,	16	June 16, 1838.	June 5, 1841.	
same	17	"	"	
	18			
	19	–	–	Relinqished Aug't 16, 1839.
	20			
Wilder, Rutter & Busby,	21	Nov. 16, 1838.	June 5, 1840.	
same	22	"	"	
	23, 24	–	–	Relinquished, Nov. 23, 1839.
Boyd & Yell, & Rigney,	25	Jan. 16, 1838.	Nov. 14, 1840.	
	26	"	"	
John Armstrong,	29	Oct. 11, 1839.		
John Yarwood,	33	July 2, 1838.	June 5, 1841.	
Myers, Beach & Rood,	35	June 16, 1838.		
Irwin, Kittering & McKibbin,	36	"		
Myers, Beach & Rood,	37	June 5, 1838.		
same,	38	"		
Irwin, Kittering & Co.,	39	June 16, 1838.		
same	40	"		
Simon Lonergan,	41	Dec. 4, 1838.		
Boswick, Putnam & Alton,	45	June 5, 1838.		
Smith, Granger and others,	46	Aug. 8, 1838	Jan. 1, 1841.	
William Avery,	47	May 20, 1837.	May 20, 1840.	
same	48	"	"	
John and Samuel Clifford,	49	Sept. 28, 1838.	Nov. 14, 1840.	
same	50	"	"	
Hugunin & Brown,	51	Feb. 1, 1838.	April 1, 1841.	
same	52	"	"	
J. T. & D. L. Roberts,	53	Dec. 16, 1837.	Nov. 14, 1840.	
James Brooks,	54, 55	Feb. 1, 1838.	April 1, 1841.	
Stewarts, Sanger & Wallace,	56	Jan. 31, 1838.	Jan. 1, 1841.	
	57	"	"	
Pruyne, Negus & Rodgers,	58	Nov. 17, 1837.		
same	59	"		
Williams & Hardy,	60	Nov. 14, 1838.	May 22, 1840.	
Stevens, Douglas & Norton,	61	"	"	
John Lonergan,	62	June 5, 1838.	June 5, 1841.	
same	63	"	"	Anderson, Poor & Osgood claim under Singer's c't
John V. Singer,	64	Jan. 20, 1838.	Jan. 10, 1840.	

Statement—Continued.

Names.	Sec'n.	Date of con't.	Time of comp'n.	Remarks.
Singer & Cozens,	65	Mar. 11, 1839.	May 20, 1840.	
Pettibone & Root,	66	Sept. 7, 1836.	May 20, 1840.	
Wm. B. & E. Newton,	67, 68	Nov. 13, 1837.	Nov. 14, 1840.	
George Barnett,	69, 70	Jan. 8, 1838.		
same	71, 72	"		
same Locks,	1, 2			
Chas. Kerr,	73	June 5, 1838.		
Sterling & Blanchard,	74	"		
same	75	"		
James Ryan & Co.,	76	"		
Steele & Amer,	77	Oct. 19, 1838.		
Matteson & Ryan,	78	"		Relinquished April 1, [1839.
Matteson & Shoemaker,	78	April 1, 1839.		
N. & S. S. Davis,	79	June 5, 1838		Reling. Apr. 1, 1839.
C. D. Davis,	79	April 1, 1839		
S. R. Bradery,	80	Nov. 24, 1838.		
H. McLaughlin,	81	Aug. 7, 1838.		
J. Crotty,	82	"		
same	83	"		
A. P. McDonald & Co.,	84	June 5, 1838.		
Hendricks & Rush,	85	16,		
same	86	"		
same	87	"		
Richard Morris,	88	5,		
Elhanan Gay,	89, 90	"		
Lot Whitcomb,	91	Nov. 1, 1838.		
Wm. Chatfield,	92	16.		
Benj. M. Webber,	93	5,		
John Hossack,	94	June 16, 1838.		Reling. June 8, 1840.
same	95	"	Dec. 2, 1839.	Completed.
Hendricks & Rush,	96	"		Comp Oct 1, 1839.
same	97	"		" Mar. 2, 1840.
Sherburn & Gobin,	98	June 5, 1838.		
Obed Smith,	99	Aug. 7, 1838.		" Aug. 7, 1840.
Sherburn & Gobin,	100	June 5, 1838.		" June 1, 1840.
Caldwell & Milligan,	101	Sep. 14, 1838.		" Oct. 1, 1839.
Jas. Drummond,	102	Nov. 1, 1838.		
H. D. Risley,	103	June 16, 1838.		" June 1, 1840.
Clifford & Co.,	104	June 5, 1838.		
Crawford, Harvey & Harvey,	105	Nov. 31, 1838.		
	106	Oct. 31, 1838.		
	107	"		
	108	"		
Lovell Kimball,	155	May 20, 1837.	May 20, 1839	
Maus & Flood,	156	"	"	
same	157	"	"	Abandoned by com'rs,
same	158	"	"	[June 15, 1839.
same	159	"	"	
Benj. F. Lamb,	160	June 5, 1838.	June 5, 1840.	
Edward McSweeney,	161	Sep. 7, 1838.	"	
Jno. Armour & Ed. Knox,	162	Aug. 1, 1837.	May 20, 1839.	
P. H. Flood,	163	Sep. 7, 1838.		Abandoned by com'rs,
Glover, Roberts & Matson,	164	Oct. 19, 1837.	May 20, 1839.	[June 5, 1839.
John Carey,	165	May 1, 1839		Aban'd by contractor.
Conrad Seabaugh,	166	Jan. 3, 1838.		Aban'd by com'rs, May
D. Sanger & Sons,	167	June 5, 1838.		[1, 1839.
Wm. E. Armstrong,	168	Oct. 29, 1836.		
same	169	"		
same	170	Dec. 4, 1837.	Nov. 14, 1839.	
Wm. & Thos. Harkness,	171	Mar. 21, 1838.		
Jno. C. Champlin,	172	Mar. 4, 1839		

Statement—Continued.

	Section.	Date of con't.	Time of comp'n.	Remarks.
Wm. Harkness,	173	Sept. 1, 1838.	June 5, 1840.	
Jno. Armour, - -	174	July 2, 1838.		
Ezra Durgin, - -	175	May 20, 1837.		
same - -	176	"		
Johnson & Johnson, -	177	"		
Nathan Eels, - -	178	Aug. 22, 1837.		
Wm. Caldwell, - -	179	Sep. 12, 1838.		Comp. June 1, 1840.
Wm. E. Armstrong, -	180	May 20, 1837.		" Oct. 1, 1839.
Kenion & Lamb, -	181	Aug. 22, 1837.		" Sep. 30, 1839.
Edw. McSweeney, -	182	May 20, 1837.		
Clarke & Dickinson, -	183	July 2, 1838.		" Oct. 1, 1839.
same - -	184	"		" "
Geo. W. Armstrong, -	185	Nov. 5, 1838.		
same - -	186	"		
same - -	187	"		
Wm. Martin, - -	188	Oct. 20, 1836.		" Sep. 1, 1838.
B. F. Lamb, - -	189	"		" Aug. 1, 1838.
Sanger, Nichols & Beale,	190	"		" Oct. 1, 1839.
same - -	191	"		" June 1, 1840.
same - -	192	"		" "
same - -	193	"		" Oct. 1, 1839.
Townsend, Kinney and Byrne, - -	194	Jan. 20, 1838.		" June 1, 1840.
Isaac Hardy, - -	195	May 1, 1839.		
same - -	196	"		
same - -	197	"		
LOCKS.				
Chas. Kerr, - -	No. 3	Aug. 1, 1838.		
same - -	4	"		
R. L. Wilson & Co., -	5	June 5, 1838.		
Hall and Grant, - -	6	"		
same - -	7	"		
Beale & Cooper, - -	11	June 7, 1838.		
Armstrong & Johnson, -	12	Nov. 10, 1838.		
Durgin & Witham, -	13	June 5, 1838.		
Jno. Blackmore, - -	13	May 29, 1841.		
Wm. Byrne & Co., -	14			
J. Cooper & Co., -	15			
DAMS.				
R. L. Wilson & Co., -	No. 1	June 5, 1838.		At Joliet.
Chs. Kerr, - -	2	"		"
same - -	G. Lock.	"		"
AQUEDUCTS.				
D. Sanger & Sons, -	Fox Riv.	June 5, 1838.		
Thomas Beale, -	Pecum'g.	Oct. 8, 1838.		
Wm. Byrne, - -	L. Verm.	"		
Byrne Cahill, -	same	May 29, 1841.		Morris letting.
Peter Stewart, -	Du Page.	Dec. 1, 1838.		
STONE CULVERTS.				
Crawford & Harvey, -	sec. 108	June 1, 1839.		
Wm. L. Perce, -	156	June 15, 1889.		
same - -	158	"		

Statement—Continued.

Names.	Section.	Date of contract.
FOX RIVER FEEDER.		
Greene, Stadden & Donovan, -	Dam.	Nov. 14, 1837.
same - - -	G'd Lock.	"
same - - -	Sec. No. 1	"
same - - -	2	"
same - - -	3	"
same - - -	4	"
same - - -	5	Mar. 21, 1838.
Stephen Emerson, - -	6	Nov. 14, 1837.
Francis Chambers, - -	7	Aug. 13, 1838.
Crosier & Walker, - -	8	Mar. 21, 1838.
RIVER CHANNEL AT 'SAG.'		
Kennedy & Bracken, - -	-	1838.
MORRIS LETTINGS.		
Lafferty & McKowan, -	109	Sept. 20, 1841.
McDonald, Williams & Co., -	110	"
same - - -	111	"
Lafferty, McKowan & Co., -	112	"
M. Benjamin, - -	113	"
Burke Vanalstine, - -	114	"
same - - -	115	"
same - - -	116	"
T. Abbott, - - -	117	"
Mott & Owen, - -	118	"
J. Francis, - - -	119	"
same - - -	120	"
M. Benjamin, - -	121	"
same - -	122	"
Thos. Galhear, - -	123	"
James Malloy, - -	124	"
Davlin & Whitcomb, - -	125	"
Lafferty & McKowan, -	126	"
J. Croneen, - - -	127	"
Beale & Twitchell, - -	128	"
same - - -	129	"
H. L. Gallaher & Co., -	130	"
McDonald, Williams & Co., -	131	"
same - - -	132	"
H. L. Gallaher & Co., -	133	"
same - - -	134	"
Reddick & O'Sullivan, -	135	"
Thos. Galhear, - -	136	"
same - - -	137	"
H. L. Gallaher & Co., -	138	"
Patrick Kinney, - -	139	"
Pat. & John Kelly, - -	140	"
Hennessy & Brennan, -	141	"
Reddick & O'Sullivan, -	142	"
Kelly & Crotty, - -	143	"
same - - -	144	"
same - - -	145	"
same - - -	146	"
M. Kennedy & Co., - -	147	"
Armour & Lamb, - -	148	"
M. Kennedy & Co., - -	149	"
Armour & Lamb, -	150	"
Lafferty, McKowan & Co., -	151	"

Statement—Continued.

Names.	Section.	Date of contract.	
T. & D. Kelly, - -	152	Sept. 20, 1841.	
Lafferty & McKowan, -	153	"	
M. Kennedy & Co., - -	154	"	
LOCKS.			
J. Kinslea, - - -	No. 8	"	
M. Kennedy & Co., - -	9	"	
same - - -	10	"	
AQUEDUCTS.			
J. Kinslea, - -	Aux Sable.		
STONE CULVERTS.			
M. Kennedy & Co., - -	On sec. 112	"	
Lafferty, McCowan & Co., -	126	"	
M. Killalea, - - -	145	"	
same - - -	148	"	
M. Kennedy & Co., - -	149	"	
same - - -	154	"	
WOOD CULVERTS.			
Campbell & McGrr, - -	On sec. 119	"	
same - - -	121	"	
Lafferty & Larkin, - -	134	"	
same - - -	136	"	
same - - -	141	"	
A. Johnson, - - -	142	"	
Hadden & Costello, - -	170	May 29, 1841.	
D. Woodruff, - -	161	"	
R. Kelly, - - -	162	"	

STATEMENT B.

"And it is further agreed and understood, that during the existence of this lease, the said party of the second part do covenant and agree to indemnify and save harmless the said board of trustees and their successors, and their agents, from and on account of all claims, demand or demands, suits and prosecutions, to be brought by any person or persons, for any damage done to any interest on Fox river, except Green & Stadden, at Dayton, for diverting or causing to be diverted, the water of Fox river from the original channel, and to indemnify and save harmless the said board of trustees from all costs, damage and expenses growing out of the same; and in case such board of trustees should be prosecuted for damages for such diversion, or any proceedings should be instituted against them for damages, or any of their officers therefor, the said party of the second part will pay all costs, expenses and damages they may be subject to on account thereof, and fully and completely indemnify and save said board of trustees harmless on account thereof."

REPLY OF O. H. HAVEN

To the argument of N. W. Edwards on the subject of their claim.

In the case of the claim of Philo A. and Orlando H. Haven the supreme court have twice decided that we are entitled to compensation for the use of half of the water of the stream, under the circumstances mentioned by the court. A board of appraisers have, since those decisions, heard the testimony and arguments of counsel, and have awarded us damages, under all the circumstances, at very nearly or quite the same rate claimed of the state. The questions of law and fact involved in this case have been six times adjudicated, at an expense already of some $2,000, or more, to the canal fund; and our right to compensation has every time been affirmed. The particulars appear in the testimony on file, and in the reports referred to by Mr. Edwards.

O. H. HAVEN.